TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1902.

No [illegible] 83.

GEORGE H. EARLE, JUNIOR, RECEIVER OF THE CHESTNUT STREET NATIONAL BANK, PLAINTIFF IN ERROR,

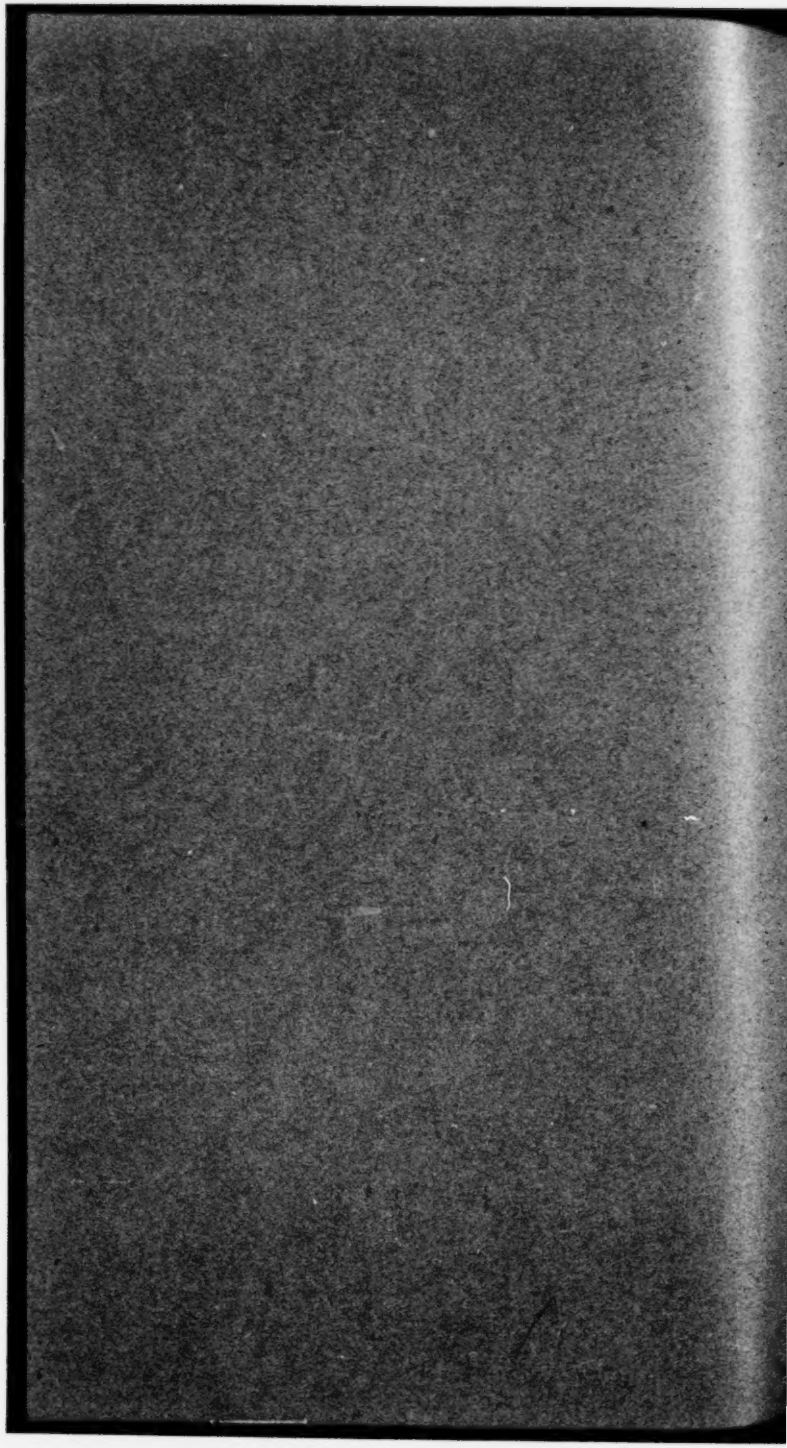
vs.

SUSAN CARSON.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED APRIL [illegible], 1902.

(18,119.)



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IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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APRIL SESSIONS, 1898. (1)

Charles Biddle,
W. H. Addicks,
Asa W. Waters,

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank of Philadelphia,

vs.

SUSAN CARSON.

Richard C. Dale.

Assumpsit.

May 21, 1898. Praecipe for summons filed. Summons exit returnable first Monday of June next.

May 24, 1898. Summons returned. Service accepted.

May 24, 1898. Richard C. Dale, Esq., enters his appearance for defendant.

May 27, 1898. Statement of plaintiff's claim filed.

June 14, 1898. Affidavit of defence filed.

June 29, 1898. Rule for judgment for want of a sufficient affidavit of defence filed.

September 2, 1899. Rule for judgment withdrawn and rule to plead filed.

September 11, 1899. Plea filed.

March 8, 1900. Charles Biddle, Esq., appears for plaintiff.

April 9, 1900. And now, to wit, a jury being called, come to wit (see minutes).

April 10, 1900. And the jurors aforesaid, upon their oaths and affirmations aforesaid, respectively do say that they find for defendant.

April 18, 1900. Motion and reasons for new trial filed. Order and (2)
agreement to extend time for motion for a new trial and appeal filed.

May 7, 1900. Argued sur motion for new trial.

May 7, 1900. Bill of exceptions filed.

May 29, 1900. Rule for new trial discharged.

May 30, 1900. Order to enter judgment filed. Judgment accordingly.

June 13, 1900. Petition for writ of error allowed and filed.

June 13, 1900. Writ of error issued and copy thereof lodged in Clerk's office for adverse party.

June 13, 1900. Assignments of error filed.

June 13, 1900. Bond sur writ of error approved and filed.

June 13, 1900. Citation allowed and issued.

June 25, 1900. Citation returned service accepted.

(3) IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA, IN THE THIRD CIRCUIT.

No. 37. April Session, 1898.

GEORGE H. EARLE, Receiver,

vs.

SUSAN CARSON.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *scl.*

Pleas in proceedings before the Honorable the Judges of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the Third Circuit of April Session, 1898, No. 37.

Be it remembered that on the 21st day of May, 1898, the plaintiff, by his counsel, comes into our Court here and sues forth a writ of summons against defendant, which, with the endorsement returned thereto, is in the words and figures following, to wit:

(4) UNITED STATES OF AMERICA, *ss.*

THE PRESIDENT OF THE UNITED STATES.

To the Honorable the Judge of the Circuit Court of the United States for the Eastern District of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between George H. Earle, Jr., Receiver, is plaintiff, and Susan Carson, defendant, a manifest error hath happened, to the great damage of the said George H. Earle, Jr., Receiver, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Third Circuit, together with this writ, so that you have the same at the City of Philadelphia within thirty days, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 13th day of June, in the year of our Lord one thousand nine hundred.

SAMUEL BELL,
Clerk of the Circuit Court of the United States.

Allowed by
GEO. M. DALLAS,
Circuit Judge.

UNITED STATES OF AMERICA, *ss.* (5)

THE PRESIDENT OF THE UNITED STATES.

To Susan Carson, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the United States, Eastern District of Pennsylvania, wherein George H. Earle, Jr., Receiver, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable George M. Dallas, Judge of the Circuit Court of the United States, this 13th day of June, in the year of our Lord one thousand nine hundred.

GEO. M. DALLAS,
Circuit Judge.

Service accepted,
RICHARD C. DALE,
Attorney for Plaintiff.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR (6)
THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1898. No.

GEORGE H. EARLE, Jr., Receiver of the Chestnut Street National Bank of Philadelphia, Plaintiff,

vs.

SUSAN CARSON, Defendant.

PRAECIPE.

Issue summons in assumpsit returnable sec. leg.

W. H. Addicks and Asa W. Waters, Attorneys for Plaintiff, May 21, 1898.

Endorsed: No. 37, April Sess., 1898. U. S. Circuit Court, E. D. of Penna. George H. Earle, Jr., Receiver, etc., vs. Susan Carson. Praecipe. W. H. Addicks and Asa Waters, Attorneys for Plaintiff. Filed May 21, 1898. Samuel Bell, Clerk, per G. B., Jr.

(7) UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA, } *sct.*

THE PRESIDENT OF THE UNITED STATES.

To the Marshal of the Eastern District of Pennsylvania, greeting:

We command you that you summon Susan Carson, late of your district, if she may be found therein, so that she be and appear before the Judges of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, of the Third Circuit, at a session of the same Court to be holden at Philadelphia, on the first Monday of June next, to answer to George H. Earle, Jr., Receiver of the Chestnut Street National Bank of Philadelphia, in the plea of assumpsit, and have you then there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States at Philadelphia, this 21st day of May, A. D. 1898, and in the 122d year of the Independence of the United States.

[Seal.]

SAMUEL BELL,
Clerk of Circuit Court, U. S.
Per G. B., Jr.

(8) I herewith accept service of the within writ and direct the Clerk of the Court to enter my apearance for Susan Carson, the within defendant.

RICHARD C. DALE,
Attorney for Defendant.
5, 23, 1898.

Endorsed: No. 37. Circuit Court, April Session, 1898. Earle Jr., Receiver, vs. Carson. Summons Assumpsit. Filed May 24, 1898. Samuel Bell, Clerk. Returnable on the first Monday of June next. W. H. Addicks, Asa W. Waters, Attorneys for Plaintiff.

IN THE CIRCUIT COURT OF THE UNITED STATES, IN (9)
AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 37. April Session, 1898.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

IN ASSUMPSIT.

STATEMENT OF PLAINTIFF'S CLAIM.

The Chestnut Street National Bank, located in Philadelphia, in the Eastern District of Pennsylvania, was duly incorporated and organized, and prior to December 23, 1897, transacted a banking business under the laws of the United States, as a National Banking Association, but on said last named day failed and suspended payment of its obligations, and was thereupon by order of the Comptroller of the Currency of the United States declared insolvent, and thereafter, on January 29, 1898, the said George H. Earle, Jr., was lawfully appointed by said Comptroller of the Currency Receiver thereof, and was duly qualified as such, and is now administering the duties of his trust, and as such Receiver brings this action.

That there is due and owing by Chestnut Street National Bank (10)
contracts, debts and engagements to its creditors which the assets and credits of said banking association are wholly insufficient to pay and discharge, and it has become necessary in order to pay and discharge said contracts, debts and engagements, to enforce the liability of the shareholders of the capital stock of said Chestnut Street National Bank, as provided by Sections 5151 and 5234 of the Revised Statutes of the United States, that therefore the Comptroller of the Currency, who is by law charged with that duty, after having ascertained, determined and decided that in order to pay said contracts, debts and engagements of said banking association, an assessment of one hundred (100) per centum upon the par value of each share of the capital stock of said Chestnut Street National Bank is necessary, made an order in writing to that effect, directed to the plaintiff herein, making said assessment payable April 1, 1898, and pursuant to said order, the plaintiff notified each and every shareholder and demanded payment thereof.

That the capital stock of said association is five hundred thousand (500,000) dollars, divided into five thousand (5,000) shares of the

par value of one hundred (100) dollars each, and long prior to the said 23d day of December, 1897, there was issued to and in the name
(11) of said defendant, Susan Carson, and she is the owner for the purposes of said assessment of ten (10) shares of the capital stock of said Chestnut Street National Bank, and is liable under the law of the United States to pay the assessment of one hundred (100) per centum thereon, or one thousand (1,000) dollars, with interest at six per centum per annum from April 1, 1898, the date the same is payable, by order of the Comptroller of the Currency, and that said defendant, although often requested, has utterly neglected and refused to pay said one thousand (1,000) dollars, or any part thereof, and plaintiff says that as such Receiver, it is his duty under the direction of the Comptroller of the Currency to proceed to the collection of said assessment, and says the defendant, Susan Carson, is indebted to him as aforesaid, for the purposes aforesaid, in the sum of one thousand (1,000) dollars, with interest at six per centum per annum (as damages for the detention thereof from April 1, 1898, and therefore he brings this suit, and for said sum of one thousand (1,000) dollars and interest thereon as aforesaid, he asks judgment with costs.

W. H. ADDICKS,
ASA W. WATERS,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } ss.

George H. Earle, Jr., being first duly affirmed according to law,
(12) deposes and says that he is Receiver of the Chestnut Street National Bank by appointment of the Comptroller of the Currency, and as such is plaintiff in the above named action, and that the facts set forth in the foregoing statement are true, to the best of his knowledge, information and belief.

GEORGE H. EARLE, JR.

Affirmed to and subscribed before me this 26th day of May, A. D. 1898.

H. G. HART,
Notary Public.

Commission expires January 19, 1901.

[Seal.]

Endorsed: No. 37, April Session, 1898. C. C. of U. S., E. D. of Pa. Earle, Receiver, vs. Susan Carson. Statement of Plaintiff's Claim. Filed May 27, 1898. Samuel Bell, Clerk R. W. H. Addicks, Asa W. Waters.

IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (13)

No. 37. April Session, 1898.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON

IN ASSUMPSIT.

AFFIDAVIT OF DEFENCE.

STATE OF PENNSYLVANIA, } ss.
COUNTY OF PHILADELPHIA, }

Susan Carson, being duly sworn according to law, doth depose and say: I am the defendant in the above entitled case; I have a full, just and complete defence to the whole of plaintiff's demand of the following nature and character, to wit:

I was not a stockholder of the Chestnut Street National Bank at the time of the insolvency of said bank. Some time prior thereto I had been a stockholder, the full history of my ownership of said shares being as follows:

My uncle, Henry Carson, of the City of Philadelphia, had been a shareholder in said bank for many years prior to his death. He died in the month of July, 1896. Under the provisions of his will I received in the month of November, 1896, a certificate for ten shares (14) of the capital stock of said bank, and I continued to be the owner of the same until the month of November, 1897, when I was advised by my brother, Hampton L. Carson, upon whom I rely for advice in the care of my property, that said investment was not of a character which I should hold. Acting upon his advice, but with no knowledge, information or suspicion that the Chestnut Street National Bank was insolvent, or in any manner embarrassed, on about the 30th day of November, 1897, I caused said ten shares to be advertised for sale at public auction at the public auction sale of M. Thomas & Sons, in the City of Philadelphia, and at said public auction held on that day, said shares were sold by public auction for the price of $100 per share, being the par value thereof. I had no knowledge at that time who was the purchaser, but delivered said shares with the usual power of attorney to make transfer of the same to

the said auctioneers, who in regular course of business, on the 2d day of December, 1897, received from the purchaser the price thereof and paid me the purchase price less the usual commissions for sale. I am informed by the said auctioneers that in fact the purchaser was William M. Singerly, then the President of said Chestnut Street National Bank, and that they delivered the certificate for said shares with the power to transfer the same to William Steele, the Cashier
(15) of said bank, for the purpose of making transfer of said shares on the books of the bank, and that at the time of said delivery it was understood between them and the said Steele that said transfer was forthwith to be made. Since the appointment of the Receiver of said bank I have been informed that the said Singerly and said Steele in fraud of my rights in the premises failed to make the proper entries of transfer on the books of said bank; but having sold said shares in good faith, with no knowledge or suspicion of the insolvency or approaching insolvency or embarrassment of said bank, and having delivered the certificates for transfer, with the proper powers, to an officer of the bank, in order that the same might be transferred, and having had no knowledge of the neglect of the officers of said bank to perform their duties in the premises until after the appointment of the Receiver of said bank, I am advised by counsel that I am under no liability in the premises.

SUSAN CARSON.

Sworn and subscribed to before me
this 11th day of June, 1898.

HENRY RAINEY,
[Seal.] Notary Public.

(16) Endorsed: No. 37, April Sessions, 1898. U. S. Circuit Court. George H. Earle, Jr., Receiver, vs. Susan Carson. Affidavit of Defence. Filed June 4, 1898. Samuel Bell, Clerk, per G. B., Jr. R. C. Dale.

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(17) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 37. April Sessions, 1898.

GEORGE H. EARLE, JR., Receiver of Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

IN ASSUMPSIT.

And now, June 29, 1898, on motion of Asa W. Waters, Esq., and W. H. Addicks, Esq., Plaintiff's Attorneys, rule on defendant to show cause why judgment should not be entered for want of a sufficient affidavit of defence.

Returnable Tuesday, July 5, 1898.

Endorsed: No. 37, April Sessions, 1898. U. S. C. C. E. D. of Pa. Earle, Jr., Receiver, vs. Susan Carson. Rule for Judgment. Asa W. Waters, W. H. Addicks. Filed June 29, 1898, Samuel Bell, Clerk, per G. B., Jr.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (18)

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

IN ASSUMPSIT.

April Session, 1898. No. 37.

RULE TO PLEAD.

To the Clerk of the above named Court:

Sir: Please withdraw the rule for judgment for want of affidavit of defence and enter rule on defendant to plead in 15 days or judgment sec. reg.

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Plaintiff.

Endorsed: No. 37. April Sess., 1898. U. S. C. C. E. D. of Pa. In Assumpsit. George H. Earle, Jr., Receiver of the Chestnut Street Nat'l Bank, vs. Susan Carson. Withdrawal of Rule for Judgment for want of affidavit of defence and rule to plead. Asa W. Waters, W. H. Addicks, Attorneys for Plaintiff. Filed Sep. 2, 1889. Samuel Bell, Clerk, H. R.

(19) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON.

April Session, 1898. No. 37.

To the Clerk of the U. S. C. Court :

The defendant in the above entitled case pleads non assumpsit.

R. C. DALE,
Attorney for Defendant.

Endorsed: 37. U. S. C. C. April Sess. 1898. Earle, Receiver, vs. Susan Carson. Plea. R. C. Dale. Filed Sep. 11, 1899. Samuel Bell, H. R.

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(20) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

GEORGE H. EARLE, JR., Receiver,

vs.

SUSAN CARSON.

April Term, 1898. No. 37.

Please enter my appearance in the above case for the plaintiff, George H. Earle, Jr., Receiver of the Chestnut Street National Bank.

CHARLES BIDDLE.

March 6th, 1900.

Endorsed: U. S. C. C., E. D. of Pa. No. 37. April Term, 1898. George H. Earle, Jr., Receiver, vs. Susan Carson. Appearance of Charles Biddle. Filed Mar. 8 1900. Samuel Bell, Clerk.

(21) And afterwards, to wit: on the 9th day of April, 1900, the Jury being called come, to wit: John C. Rowland, Oliver P. Smith, Robert Depew, Jeremiah G. Barton, George Fritz, Harrison S. Puterbaugh, James B. McLean, J. H. Redsecker, Harry Rogers, Charles Esrey,

Adolph H. Kretz, John H. La Rue, who are duly empanelled, returned, chosen, tried and sworn or affirmed to speak the truth, etc., in the issue joined in this case.

And afterwards, to wit: on the 10th day of April, 1900, the jurors aforesaid upon their oaths or affirmations aforesaid, respectively do say that they find for Defendant.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (22)

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON.

IN ASSUMPSIT.

No. 37 of April Sess. '98.

SAME

vs.

ANNIE C. CARSON.

IN ASSUMPSIT.

No. 38 April Sess. 1898.

SAME

vs.

HAMPTON L. CARSON.

IN ASSUMPSIT.

No. 39 April Sess. 1898.

Be it remembered, That in the said term of April Session, 1898, came the said plaintiff into the said Court, and impleaded the said defendant in a certain plea of assumpsit, &c., in which the said plaintiff declared (prout narr.) and the said defendant pleaded (prout pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said Court, held at Philadelphia in the District aforesaid before the Honorable George M. Dallas,

Judge of the said Court, the ninth day of April, 1900, the aforesaid issue between the said parties came to be tried by a Jury of the said District for that purpose duly impanelled (prout list of Jurors), at which day came as well the said plaintiff as the said defendant, by
(23) their respective attorneys, and the jurors of the Jury aforesaid impanelled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiff and defendant stated to the Court that it is admitted that the Chestnut Street National Bank was duly incorporated and organized under the laws of the United States as a national banking association; that it transacted a banking business in the city of Philadelphia, in said Eastern District of Pennsylvania, until December 23, 1897, when suspending payment of its obligations, it was declared insolvent by the Comptroller of the Currency, and that on January 29, 1898, George H. Earle, Jr., was appointed by the said Comptroller under the laws of the United States, receiver of said bank, and as such, by direction of the said Comptroller, is plaintiff in these actions in assumpsit; and that on or about April 1, 1898, the said Comptroller finding it necessary, ordered an assessment of 100 per cent. of the par value of the capital stock of said Bank, and ordered the plaintiff, in writing, to collect the same equally and ratably from each and every stockholder of said bank, as prescribed by Sections 5151 and 5234 of the Revised Statutes of the United States; and thereupon counsel for said plaintiff offered the witnesses, books and papers in manner and form as herein set forth and
(24) did then and there except to the rulings of the Court, make the admissions and rest as herein set forth. And thereupon counsel for said defendant, after moving for nonsuit, which motion was overruled by the Court, offered the witnesses, books and papers in manner and form as herein set forth; and did then and there except to the rulings of the Court, make the admissions and rest as herein set forth; and thereupon counsel for said plaintiff offered rebutting evidence, and excepted to the rulings of the Court as is herein set forth. The testimony was then closed and the Court proceeded to charge the jury as set forth herein.

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(25) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sess. 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON.

April Sess. 1898. No. 38.

SAME

vs.

ANNIE C. CARSON.

April Sess. 1898. No. 39.

SAME

vs.

HAMPTON L. CARSON.

Philadelphia, April 9th, 1900.

Messrs. Biddle & Waters for Plaintiff; R. C. Dale, Esq., for Defendants.

HON. GEO. M. DALLAS, J.

(It is admitted that Mr. Earle has been appointed the receiver of the Chestnut Street National Bank, and that the Comptroller of the Currency has made an assessment of 100 per cent. upon the bank stock.)

HOWARD E. YOUNG, Sworn.

By Mr. Biddle:

Q. What is your position in the Chestnut Street Bank?

A. I represent the receiver, and have charge of his books of ac- (26)
count, and also have custody of the assets.

Q. Have you there the stock certificate book of the Chestnut Street National Bank?

A. I have. (Book produced.)

Q. Is that it?

A. It is.

Q. Will you turn to the certificate stub issued to Susan Carson and tell us how many shares she holds.

(Objected to by Mr. Dale.)

Q. Is that the book?

A. This is the certificate book; yes, sir.

Q. Will you turn to the certificate stubs and mark them there so that I can get them, of the three defendants here, Susan Carson, Annie C. Carson and Hampton L. Carson?

(The witness does as requested.)

Mr. Biddle: I offer this book in evidence.

(Objected to. Objection sustained for the present, without prejudice to the right of the plaintiff to re-offer.)

Cross-Examination.

By Mr. Dale:

Q. Where are the certificates which were torn off these stubs?

(Objected to. Objection sustained.)

(27) G. ASHETON CARSON, Sworn.

By Mr. Biddle:

Q. Have you looked at these signatures? (Indicating on book.)

A. Yes, sir.

Q. Can you tell me whose they are?

A. They are my signatures.

Q. Did you receive on September 29th, 1896, ten shares of stock of the Chestnut Street National Bank for Annie C. Carson?

A. I did.

Q. Did you receive ten shares of stock for Susan Carson?

A. I did.

Q. Did you receive ten shares of stock for Hampton L. Carson?

A. I did.

Q. Were you acting as their agent when you signed these receipts for that stock?

A. I received the stock as an executor of an estate and distributed them. The stock was left by Henry Carson, an uncle of these people, and I was the executor, and I transferred the stock to them, and I receipted for it, and I gave it to the people named in the book.

Q. You gave ten shares of this stock to Annie C. Carson?

A. I did.

Q. And to Susan Carson?

A. I did.

Q. And Hampton L. Carson?

A. Yes, sir.

Q. And they received it from you?

A. They did.

Q. These certificates, of course, were in the names of the various parties?

A. They were.

Q. And they received the dividends from that day until the bank closed, did they not?

A. I know nothing about the dividends, because I gave them the stock. That is as far as I went in the matter.

Cross-Examination.

By Mr. Dale:

Q. I understand you acted in this matter as the Executor of the estate of Henry Carson?

A. I did.

Q. Who had been the owner of the shares theretofore?

A. He had, yes.

Q. And you, as his executor, made certain transfers to his nephews and nieces?

A. I did.

Q. Who were entitled to receive these shares under the will of Mr. Henry Carson?

A. Yes, sir.

Q. You made certain transfers on the books of the Chestnut Street (28) Bank?

A. I don't know whether I made them on the books or whether I made them on the certificates. That I can't say.

Q. On the date here specified, to wit: September 29, 1896, some officer of the Chestnut Street Bank handed to you three certificates for ten shares each, made out in the names of Hampton L. Carson, Annie C. Carson and Susan Carson?

A. Yes, sir; and Steele was the man who handed them to me.

Q. Mr. Steele, the cashier of the bank, handed them to you?

A. Yes, sir; he did.

Q. And these particular pieces of paper you handed to the parties entitled to receive them?

A. Yes, sir; and took their receipt for them.

By Mr. Biddle:

Q. Have you got those receipts?

A. Yes, in my pocket.

Q. Produce them.

(Receipts produced.)

Mr. Biddle: I offer in evidence the three receipts of the three defendants for the respective shares of stock given to them by Mr. G. Asheton Carson.

I also offer in evidence the receipts of Mr. G. Asheton Carson to the bank for the respective shares of stock, the certificates for which he delivered to the three defendants.

(The latter offer is objected to, and Mr. Dale asks permission to
(29) cross-examine the witness, Young, by whom the book was produced and identified as the Stock Receipt Book of the Chestnut Street National Bank, as to the present whereabouts, if he knows, of the certificates referred to in the stubs.)

(The permission to cross-examine is refused. Exception for defendants.)

Mr. Biddle: I offer the affidavits of defence in the three cases in evidence.

(Mr. Biddle withdrew the offer of the affidavits of defence in evidence.)

HOWARD E. YOUNG, re-called.

By Mr. Biddle:

Q. Have you got the book here showing the receipts for the payment of dividends from 1896 until the time of the failure of the bank?

A. I have not.

Q. Can you produce those receipts?

A. I cannot. I think they did not take receipts; they mailed checks.

Q. Can you produce those checks?

A. I cannot.

Q. Where are they?

A. I don't know. I did not know they were wanted or I would have looked for them. I have never seen them.

(30) Q. Have you got the transfer book of the Chestnut Street National Bank?

(Book produced.)

Q. Will you look at that and see if there appears to be any transfer of the shares of Susan Carson, Annie C. Carson and Hampton L. Carson?

Mr. Dale: Is the purpose of the question to show that these defendants continued to be stockholders down to the time of the insolvency of the bank?

Mr. Biddle: Yes.

Q. Do you find on that transfer book any evidence of the stock of the three defendants ever having been transferred?

A. I do not.

Q. Then, as I understand it, they appear as stockholders upon the books of the bank up to the day of its closing?

A. Yes, sir.

Cross-Examination.

By Mr. Dale:

Q. When you said that they appeared upon the books of the bank as stockholders until the day of its closing, what books did you refer to?

A. The transfer book and stockholders' ledger.

Q. I understood you to say that on that transfer book you found no entry at all?

A. There is no entry of their having been transferred.

Q. Therefore there is no entry on the transfer book relating (31) to the subject?

A. As to this transfer; no, sir.

Q. Have you the stock ledger there?

A. Yes, sir.

Q. Please produce it.

(Book produced.)

Q. Will you please refer to the entry relating to these three certificates of stock? Will you read any entry in the stock ledger showing anything relating to the ownership of stock by any of these three defendants?

A. I find on page 54 of the stock ledger of the Chestnut Street National Bank an account opened with Annie C. Carson, No. 426 Drexel Building, and the entry is: "1896, September 28, by Henry Carson, ten shares." The number of the certificate issued is 463.

Q. What do you find with reference to the other defendants, Susan and Hampton L.?

A. On page 56 of the stock ledger I find an account opened with Susan Carson, Room 426 Drexel Building, and the entry is: "1896, September 28, by Henry Carson, ten shares." Certificate issued No. 464 for ten shares. On page 57 of the stock ledger I find an account opened with Hampton L. Carson, 426 Drexel Building, and the entry is: "1896, September 28, by Henry Carson, ten shares." Certificate issued No. 465 for ten shares.

By the Court:

Q. That was all Henry Carson's stock, was it?

A. Yes, sir; it was a transfer from him. (32)

By Mr. Dale:

Q. Please open the transfer book which you referred to.

(The witness does as requested.)

Q. You say you have looked over that transfer book from Septem-

ber, 1896, until the closing of the bank, and you do not find any entries there as to these three defendants?

A. No, sir.

Q. I want to ask you whether this transfer book contains a true record of all shares presented to your company for transfer from September, 1896, until the closing of the bank?

A. I don't know anything about the book. I never had anything to do with it before the failure of the institution.

Q. Who had?

A. The cashier, I would say, from the writing.

Q. Is it not a fact that there came into your possession after the insolvency of the bank a large number of certificates which had been left with the bank for transfer, with properly executed powers, of which no record was made in that book?

(Objected to. Objection overruled. Exception for plaintiff.)

A. I received a number of certificates on behalf of the Receiver, which represented money, having been paid for out of the bank's funds.

Q. Was any transfer made of those certificates on the books of the bank?

(34) A. No, sir.

Q. Among the certificates which you thus received, did you find the three certificates made out in the names of the three defendants?

A. I did.

Q. Where are they?

A. I have them.

(Witness produces three certificates numbered respectively 463, 464 and 465, made out in the name of Annie C. Carson, Susan Carson and Hampton L. Carson, respectively, bearing date September 28, 1896, for ten shares. The witness also produces, pinned to each certificate, an irrevocable bill of sale and power to transfer, bearing date, in the case of Annie C. Carson, December 2, 1897; in the case of Hampton L. Carson, November 27, 1896, and in the case of Susan Carson, December 3, 1897, the signature in each case on the face of the power being guaranteed by Townsend, Whelen & Co.)

Q. Where did you find these papers?

A. Mr. Steele, the cashier, gave them to me.

Q. When?

A. I don't know the exact date. It was a few days after the Examiner in charge had turned the assets over to the Receiver.

Q. About when was that?

A. About the 10th of 12th of February, 1898.

Q. That was the first time you ever saw these papers? (35)

A. Yes, sir.

Q. They were then handed to you by Mr. Steele, who was the cashier at that time?

(Objected to.)

By Mr. Biddle:

Q. At the time he handed you these was he cashier?

A. The bank had failed at that time.

By Mr. Dale:

Q. Did not Mr. Steele continue to be cashier for some months after the failure of the bank?

A. That I do not know. I don't know the law on that.

Q. Don't you know he continued to act for the Receiver as cashier for some time?

A. He continued to be the clerk of the Receiver.

Q. And at the time he handed these to you he was acting as clerk for the Receiver?

A. Yes, sir.

Q. Is there anything on the face of these papers to show that Mr. Steele had any interest or relation to the matter except as cashier of the bank he signed the certificates?

A. No, sir.

Q. And he produced them from among the books and papers and archives of the bank?

A. May I be permitted to make an explanation?

Q. Answer the question and then make any explanation you wish? (36)

A. I would like to state how I came to get them.

Q. Answer the question which I put to you, and then you can make any explanation you wish?

A. I don't know where he got them from.

Q. Where was it that he handed them to you?

A. At the office of the bank, No. 721, I think is the number, Chestnut street.

Q. It was in the office of the bank?

A. Yes, sir.

Q. And in connection with the production of other books and papers of the bank they were handed to you?

A. He handed me those. If I could make an explanation of this I think I could make it clear.

Mr. Biddle: Give your explanation.

The Witness: When the Examiner in charge turned the assets over to the Receiver of the Chestnut Street National Bank, in which I acted for the Receiver subsequently, among other matters he handed to me a receipted bill of auctioneers representing thirty shares of stock of the Chestnut Street National Bank. (Paper produced.)

(Objected to by Mr. Dale.)

By Mr. Biddle:

Q. What is the paper?

(37) A. I think I stated that the Examiner in charge turned over this paper among other matters.

The Court: The paper is not offered, and it must not be read until it is formally offered.

By Mr. Dale:

Q. You were acting officially in receiving these papers?

A. Yes, sir.

Q. What was your position with the Receiver? Clerk or custodian, or what?

A. I was never given any title.

Q. You were an employee of the Receiver?

A. Yes, sir.

Q. Without going over the details of whose certificates they were, I ask you this question, were there not also handed over to you at or about the same time a considerable number of other certificates of persons who had been stockholders of the bank, whose certificates were in the office of the bank with proper powers to transfer, which had remained untransferred, this question being asked solely for the purpose of impeaching the credibility of the evidence deduced from the statement of the witness that no transfer of the shares of these defendants is found in the transfer book?

(Objected to. Objection overruled. Exception for plaintiff.)

A. There were a number of certificates handed to me by Mr. Steele with properly executed transfers attached.

(38) Q. Some of them ran back to dates many months anterior to this?

A. I don't know about that.

Q. You never had occasion to examine that?

A. No, sir.

Q. In the cases where these certificates were in the possession of the bank and were thus handed to you, where there was a failure to enter a transfer in the transfer book, there was also a failure to note the transfer on the stock ledger, of course?

(Objected to. Question withdrawn.)

Q. In the cases of these certificates handed to you as the employee of the Receiver by Mr. Steele, the cashier of the bank, where the transfer was not noted on the transfer book, no entry of the transfer was made on the stock ledger?

A. I have shown you the transfer book and the stock ledger, and they do not show any entries.

Q. There was a considerable number of certificates which came into your possession as an employee of the Receiver with proper power of attorney and bills of sale annexed, where no transfers were noted either on the transfer book or on the stock ledger?

A. Yes.

Q. And you say you have no knowledge of how these certificates came into the possession of Mr. Steele, the cashier, prior to his handing them to you?

A. I have no personal knowledge. (39)

Mr. Biddle: I offer in evidence the stock ledger and the stock transfer book.

(Mr. Dale objects to the offer of the books to prove the fact for which they are offered, when the witness who produced them stated that they did not contain a record of the transfers of the certificates which were in the possession of the cashier.)

The Court: I will receive the books provisionally, and the question of their effect, or whether they are entitled to any effect will be passed upon at the final stage by the Court.

Plaintiff rests.

Motion for non-suit.

Court adjourned until Tuesday, April 10, 1900, at 10 A. M.

(40) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sess. 1898. No. 44.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

G. ASSHETON CARSON.

Deposition of William Steele, taken by C. H. Guilbert, Notary Public, at the Eastern Penitentiary in the city of Philadelphia, on Thursday, March 29, 1900, at 12 M., pursuant to the order of the Court, dated March 22, 1900, a copy of which is attached hereto.

Present: Charles Biddle, Esq., for plaintiff; John Hampton Barnes, Esq., for defendant; Hazard Dickson, Esq., representing parties in interest.

WILLIAM STEELE, having been duly sworn, was examined as follows:

By Mr. Barnes:

Q. What was your position in the Chestnut Street National Bank in 1897?

A. Cashier.

Q. Who was the president of the bank?

A. William M. Singerly.

(41) Q. Did you in November or December of 1897 purchase at public sale at Barnes & Lofland certain shares of stock belonging to G. Assheton Carson, George C. Carson and Elizabeth C. Brown, of the Chestnut Street National Bank?

A. I could not answer without seeing the certificates. I can give you a general explanation if that will cover the case. All the certificates of stock held by the receiver of the Chestnut Street National Bank in the names of G. Assheton Carson, George C. Carson and Elizabeth C. Brown I do not know whether it was bought at Barnes & Lofland's, or M. Thomas & Sons', but it was bought for Mr. Singerly and was held by the bank.

Q. Did you go to the auctioneer's and make the bid yourself?

A. No. It was customary, when any of that stock was offered for sale on the market, they would send a postal card to the bank and also

to Mr. Singerly. Whether each of the directors received a postal card I do not know. Mr. Singerly would come to me and say to me, "Mr. Steele, you had better bid for that stock." I would ask him what price. He would give me his price; I would go to the 'phone, or get one of the young men to go to the 'phone; telephone to Barnes & Lofland or M. Thomas & Sons that I had a bid for so many shares of stock offered for sale on that day, or whenever it was to be. If the stock was bought for Mr. Singerly, it was delivered to the bank by the auctioneers and we gave him the bank due bill for it. I would then make (42) out a new certificate of stock in the name of William M. Singerly, take it to the Chestnut Street Trust Company, have it registered, and then they would make a loan on that stock to Mr. Singerly. The Chestnut Street Trust Company paid me for that stock.

Q. Did you buy any of the stock standing in the name of the persons named for your own account?

A. No, sir. Not any of that stock.

Q. None of the stock of G. Assheton Carson, George C. Carson or Mrs. Elizabeth C. Brown?

A. No, sir.

Q. Did you or did you not buy that stock for Mr. Singerly?

A. Yes, sir. As we bought hundreds and hundreds of shares of stock in the same manner.

Q. As I understand your testimony, it was paid for by money borrowed from the bank for Mr. Singerly's account?

A. No; the money was not borrowed from the bank. We merely gave them a bank due bill just temporarily until we got the money from the Chestnut Street Trust Company.

Q. Were the certificates of the stock delivered by the auctioneers?

A. Yes, sir.

Q. Was or was not any power of attorney to transfer the stock at- (43) tached to the certificates of stock?

A. There were either attached to the certificates of stock, or else endorsed on the back of the certificates.

Q. What was done with the certificates after you received them?

A. Do you mean those special certificates?

Q. Yes.

A. I generally handed them over to the paying teller, or probably kept them myself. That is, kept them in my sundry papers, &c. He would have a bill for the sale which he would have to show, and sometimes he would have the certificates, and sometimes probably I would have it.

Q. By your papers do you mean your personal papers or your papers as cashier of the bank?

A. The bank's papers. Probably lying on my desk at the time.

Q. Was any request made to you to transfer the stock upon the books of the bank when the certificate was delivered to you?

A. I have not any recollection of any such request.

Q. Was it or was it not your duty to make such transfers?

A. Yes, sir. It was my duty to transfer the stock.

Q. Why were not the transfers in this case made?

(44) A. That is a question that I cannot give you a satisfactory answer to. There was no reason why they were not transferred. Carelessness, probably. I would like to state that when that stock was delivered, as I say hundreds and hundreds of other shares of stock were, sometimes I would make out a new certificate on the day of the delivery or probably they would lie there two or three days.

Q. To whom should the stock above referred to as belonging to G. Assheton Carson, George C. Carson and Elizabeth C. Brown have been transferred?

A. To William M. Singerly.

Cross-Examination.

By Mr. Biddle:

As I understand you, you do not recollect anything about the particular stock of Mrs. Brown or the Carsons, but you are merely giving us a statement as to what was generally done when Mr. Singerly purchased stock?

A. I am speaking now of the stock that the receiver is bringing suit on to recover the assessment, I think, on the stock.

Q. You are referring to all of that stock and you are not now giving your recollection as to any particular stock, are you?

A. That refers to that stock—I think the stock originally was in the name of George Carson, Mr. Hampton Carson's father, and then
(45) it was divided up—there were quite a number, G. Assheton Carson, M. Hampton Carson and Mrs. Brown, four or five or six certificates, if I recollect aright. I cannot recall just now. All that stock of the Carsons and Brown was bought for Mr. Singerly.

Q. Do you remember when this stock was brought to you by the auctioneer?

A. No; I cannot answer that.

Q. I mean this particular stock, the Brown and Carson stock.

A. Yes.

Q. Do you mean the date?

A. No, sir.

Q. Do you recall any conversation which you had with the auctioneer at the time he brought this stock to you?

A. I do not recall any conversation.

Q. Do you recollect, however, as you have told us, that no request was made by the auctioneer to have this stock transferred?

A. I have no recollection of any; no, sir

Q. Have you no recollection of such request?

A. No, sir.

Q. You have told us here that this stock was delivered to the bank. You mean by that, do you not, that the stock was given to you individually as the purchaser?

A. Of course, they were not under the impression that I was the (46) purchaser of the stock. They were under the impression that the stock was being bought for Mr. Singerly.

Q. How do you know under what impression they were?

A. Because Mr. Lofland quite often came up to see Mr. Singerly and told him that there was some stock for sale and to see him about whether he had a bid to make.

Q. Did they think that this stock was purchased for the bank?

A. Barnes & Lofland?

Q. Yes.

A. No, sir.

Q. It was distinctly understood between you, was it?

A. I do not mean to say that it was distinctly understood. I am satisfied that the auctioneers knew that the stock was being bought for Mr. Singerly.

Q. When they brought the certificates of stock and gave them to you, they gave them to you as the agent for Mr. Singerly?

A. I suppose they would regard it in that way. Had I not been there the bank would have given a due bill; the paying teller or some one would have given a due bill for the stock, because it was quite a customary thing for us to pay for the stock in that way. (47)

Q. I am not asking what they would ordinarily have done. I want to know exactly in what capacity you received this stock. Did not Barnes & Lofland give it to you as the agent for Mr. Singerly, who had purchased the stock?

A. Of course I cannot answer that. I do not know how to answer a question like that.

Q. How did you actually get this stock? Was it brought to you by Mr. Barnes or by Mr. Lofland?

A. I do not know that either one of them brought it. Some one from the office brought it. I think Mr. Barnes' son usually came with the stock.

Q. And handed it to you?

A. Yes, sir.

Q. And said nothing?

A. Yes, sir. Well, nothing with regard to the stock at all.

Q. When you spoke of its being delivered to the bank, that is what you referred to, the transaction which you have now given us?

A. They would bring it to me, being the cashier of the bank.

Q. What do you mean by that? You say they would bring it to you as the cashier of the bank. You do not mean anything of that kind, do you? You mean that they brought it to you as the purchaser of that stock?

(48) A. That question is hardly a fair one to put to me, because I have made my explanation so clear, that that stock was bought for Mr. Singerly, and they so understood it, and when they brought it to me I would give them a bank due bill.

Q. Is it not as I say, that they brought it to you as agent for Mr. Singerly?

(Mr. Barnes objects to the question, as one to be determined from the witness' statement of the occurrence, and not one which the witness can himself determine, being a question of law.)

A. I presume that is the proper way to look at it.

Q. The bank had nothing to do with this purchase, had they?

A. No.

Q. And therefore they gave it to you as the man who purchased this stock?

A. Well, yes. That is about right.

Q. What did you do with the stock after it was delivered to you?

A. That I cannot tell. I could not answer that, because I cannot recall any particular stock. It was customary when the stock was bought —I would sometimes give it to the paying teller to hold, or sometimes would keep it myself.

Q. What do you mean by that?

(49) A. They would bring a bill—

Q. What was done with this? Give us exactly the whole transaction.

A. They would bring a bill with the stock, which I would hand over to the paying teller so he would have something to show for what he paid out. Sometimes I would hand him the certificate of stock and sometimes I would keep it myself. I can probably explain that in this way. I would sometimes be at leisure and I would go to work at once and transfer the stock to Mr. Singerly. If I was busy on something else, I would let it go with the bill to the paying teller.

Q. You would take the stock and keep it or else hand it to the paying teller.

A. Yes, sir.

Q. Where did the money come from which paid for this stock?

A. From the paying teller. He would give a bank due bill.

Q. Then when you held this stock, how did you hold it?

A. Probably I would just lay it on my desk with some other papers. It was not counted in as any money or anything of that kind.

Q. What was it counted as?

A. Nothing at all. I would merely lay the certificate on my desk. If I was not busy at the time I would make out a new certificate in the (50) name of Mr. Singerly. If I was busy probably I would hand it over to the paying teller and he would keep it with the bill at his desk.

Q. How would you account for the bank due bill that was issued for the purpose of paying for this stock?

A. The paying teller would have the auctioneer's bill and probably the certificate of stock, one or the other.

Q. Attached was the auctioneer's bill, was it?

A. I cannot answer that. He would either have the bill or the certificate of stock, one or the other. If I was not engaged at the time, the chances are I would just give the paying teller the bill and sit down and make out a new certificate of stock.

Q. When you held this stock what did the paying teller have for the purpose of showing why he had issued this bank due bill?

A. The receipted bill of the auctioneer.

Q. But then when he held the stock, he would hold the receipted bill and the stock together?

A. No; not necessarily; no. The stock would be sufficient.

Q. You cannot say what was done in these various cases which you are now referring to of the Carsons and Mrs. Brown?

A. No, sir.

Q. How was that transaction carried upon the books of the bank? (51)

A. The paying teller carried it in cash items.

Q. The paying teller carried it under the name of cash items?

A. Yes, sir. Miscellaneous items, not as part of his cash. It would not count as cash, as so much notes or gold or silver currency, but as miscellaneous or cash item.

Q. Can you tell us exactly how the paying teller or how you accounted for this purchase of stock upon the books of the bank?

A. I would have nothing to do with the carrying of the stock on the books of the bank. The paying teller would issue a due bill for

the stock purchased, and he would either have the stock or a receipted bill of the auctioneers to show what he had paid for it. That he would count in as a miscellaneous item or as a cash item. We would not count that in as currency, but just as a miscellaneous item. You will find on his book other cash items or miscellaneous items which would not count in as cash.

Q. How was it recorded on the books? Was it recorded on the books then as other cash items?

A. It was in his settlement book.

Q. In his settlement book as other cash items?

A. I cannot recall just the wording, but miscellaneous item probably.

Q. Miscellaneous cash items?

(52) A. As I say, I cannot recall the wording in his settlement book now. It has been a couple of years since that.

Q. About that?

A. Yes, sir. It was not counted in as part of his cash.

Q. When you say it was not, what do you mean?

A. I mean the certificate.

Q. Was not counted in by the paying teller or by you?

A. I had nothing to do with it. It was in making up the settlement he would pay out a due bill, which was the same thing as so much cash, and he had to have something to show for that in making up his settlement, and he would put thatdown, whatever it represented, as miscellaneous item, so as to make his cash balance.

Q. So as to make his cash balance he would put down miscellaneous items?

A. Whatever way he carried it on his book. I cannot say.

Q. Do you know that?

A. No. His settlement book would show that.

Q. Then you do not know how it was carried by him?

A. No. I do not think these questions are fair to me. What I mean to say is, I do not know what you are driving at. I am only trying to give you a truthful statement of the stock business and to show
(53) you that I individually had no interest in the matter whatever.

Q. You were merely acting as Mr. Singerly's agent?

A. That is it. When the paying teller would pay out a due bill he would keep this bill for the stock to show what he paid out until he got a check from the Chestnut Street Trust Company for that stock. There was no reason in the world why the stock was not transferred on the day of the delivery. There was no excuse for it. Unless you might put it as carelessness on my part, but just at that time, when

everything was topsy-turvy, as it were, Mr. Singerly trying to put this deal of his through, the stock was delayed longer that it should have been. But the stock was bought for Mr. Singerly and it was voted by Mr. Singerly at the last meeting of the stockholders, when they voted on going into liquidation.

Q. That was what date?

A. I could not give you the date, but it was after the bank had closed its doors.

Q. I want to know how this stock was carried on the books of the bank?

A. The only answer I could make is that it was carried as a miscellaneous item.

Q. Do you know it?

A. Yes, sir; he had to do that to balance his books. For instance, if the paying teller was charged this morning with one hundred thousand dollars, his cash balance represented that at the close of the day, if he had say ninety thousand dollars cash, this certificate, whatever it might (54) be, would make up the difference so as to make his books balance.

Q. How long was this particular stock carried in that way?

A. That I cannot answer. Much longer than it was customary to carry it. I think the stock was bought in November some time. I think it closed in December. It was carried for four or five weeks, I think.

Q. When you say that everything was topsy-turvy at that time, what do you mean by that?

A. Mr. Singerly was trying to put through that deal of his at that time.

Q. Was the bank solvent at that time?

A. I think the bank was declared to be solvent up to the morning it closed its doors. I think that was the decision of the Court.

Q. I am asking you whether you, from your knowledge of the accounts and the liabilities and the assets of the bank can say one way or the other whether it was solvent or insolvent?

A. I hold the bank was solvent.

Q. That is not what I asked you at all. I ask you whether you can tell from your knowledge of the debts and assets of that bank when it was or when it was not solvent? You individually. I am not asking what somebody told you or what you heard. I am asking you whether you individually can tell me from your knowledge of the assets and lia- (55) bilities of that bank when it was solvent or when it was insolvent?

A. If Mr. Singerly's indebtedness had been paid to the bank the bank at that time was solvent.

Q. If it had not been it was insolvent?

A. That, of course, remains to be determined, what the assets pan out.

Q. Do you know yourself one way or the other?

A Not positively; no.

Q. Do you know Mr. Singerly's condition of solvency or insolvency at that time?

A. Not any more than you do.

Q. I do not exactly understand the arrangements which you had with the Chestnut Street Trust Company. You told us that the general way was to hold it under the head of a miscellaneous item in the book of the paying teller of the bank until you had taken that stock to the Trust Company and had it transferred?

A. The Trust Company registered the bank stock.

Q. Then, as I understand it, the place to take that stock for the purpose of having it transferred was to the Chestnut Street Trust Company?

A. No, sir. The stock was transferred at the Chestnut Street Bank. The Chestnut Street Trust Company registered the bank's stock.

Q. The actual transfer was made in the bank and the registry of that transfer was made in the Trust Company?

(56) A. Yes, sir. They registered the bank's stock.

Q. Tell us exactly what was the duty of the Trust Company in making that registry. Take a supposed case of a man purchasing stock at the bank; what would he do with it in order to have it transferred?

A. The bank would transfer the stock and the stock would then be sent to the Chestnut Street Trust Company, and they would register the stock and transfer it again to the bank.

Q. Who was the officer of the Trust Company who had charge of the registration of the bank's stock?

A. The treasurer.

Q. Who was the officer of the bank who had charge of making the transfers?

A. The cashier always attended to the transfer of stock. The president and cashier both signed the certificates.

Q. Who actually made the transfer upon the books of the bank after a sale of stock had been made?

A. The cashier. That is, if he were there. It might be possible he was away sick or something.

Q. Did you then make the transfers whenever transfers were made of stock of the Chestnut Street National Bank?

A. I guess all of the transfers.

Q. Then they will be found always in your handwriting?

A. I think so. I guess in every case. (57)

Q. Then when you speak of the stock being held by the bank until it was given to the Trust Company, you mean by that it was held by the paying teller under the name of miscellaneous cash items?

A. Yes, sir.

Q. Except in those cases where you individually held the stock?

A. That had nothing to do with it.

Q. Why?

A. That is as far as the paying teller's settlements went.

Q. As far as the paying teller's settlement went, it was the same whether you held the stock or whether he held the stock?

A. Yes, sir. He either held the stock or received the bill. That was all he required; something to show for what he had paid out.

Q. Where did he keep this stock when he held it?

A. Among his other moneys, etc.

Q. And when you had borrowed the money from the Trust Company, then the money which was so borrowed was placed in the drawer of the paying teller?

A. Let me explain. When the stock was transferred on the books of the bank, after I had signed it, it was taken to Mr. Singerly for his signature as President. The stock was then delivered to the Chestnut Street Trust Company, who registered the stock. They at the (58) same time would make a loan to Mr. Singerly on that stock, and either give or send their check for the amount, which would be turned over to the paying teller. That check would go through his work charged off to the Trust Company account.

Q. Would he then substitute that check for the auctioneer's bill?

A. Yes, sir.

Q. Would that check be cashed?

A. No. It would be charged right up to the Trust Company's account. They kept an account with the bank.

Q. That part of the transaction, however, only happened after the transfer of the certificate of stock had been made?

A. Yes, sir.

Q. Until that had been done, the stock had been purchased by you on behalf of Mr. Singerly from the funds of the bank?

A. Yes, sir.

Re-Direct Examination.

By Mr. Barnes:

Q. But as I understand you, before the certificate of stock which was being held by the paying teller against the bank due bill was

transferred and a new certificate issued, it was held by the bank pay-
(59) ing teller as against the bank's due bill?

A. Yes, sir. That is, the certificate as it was delivered before the transfer. Of course on the immediate transfer we would get a check and substitute it.

Q. But pending the obtaining of the check, the paying teller held the certificate of stock with the power attached to transfer it as against the bank's due bill, which had been issued for the payment of the price of the stock?

A. That is right; yes, sir.

Q. When you speak of holding the stock, do you mean or do you not mean holding the certificate for the stock?

A. Holding the certificate.

Q. By whose direction, if you know, were the entries made by the paying teller against the bank due bill of the certificates of stock or the auctioneer's receipt for the payment of the price under miscellaneous cash?

A. He was not directed by any one to do it. The paying teller more or less at all times had probably a few items which he carried in his cash, sundry items, and that would be carried with the rest of them until he received the money for the stock.

Q. Such entries, then, are not permanent entries, as I understand you, but temporary ones?

A. Yes, sir.

(60) Q. How in the case of these entries of miscellaneous cash against these certificates of stock would these entries finally come off of the paying teller's books?

A. The moment he received the check for it.

Q. You spoke of Mr. Singerly's indebtedness to the bank. Can you tell me what that included, what character of transactions?

A. That would be hard to tell. We had his individual paper and we had other paper which they termed his allied interests.

Q. Did the latter include the Chestnut Street Trust Company?

A. No, sir.

Q. Did it or did it not include the amount paid for the purchase of this stock by you for Mr. Singerly's account?

A. That was considered an indebtedness of Mr. Singerly's.

Q. So that the amount for which the bank due bills were issued, and as against which the certificates of stock were held as miscellaneous cash pending their transfer, was an obligation of Mr. Singerly's to the bank?

A. Yes, sir. So considered. We had nothing in writing to show for it.

Re-Cross-Examination. (61)

By Mr. Biddle:

Q. The transactions of these purchases of stock were entered in but one book, were they not?

A. That is the paying teller's settlement book, you mean?

Q. Yes. That is a fact, is it not?

A. Yes, sir.

Q. You told Mr. Barnes just now that the paying teller did not do this at anybody's direction. Are you right as to that?

A. He was not directed to do it. I would get a bank due bill from him and hand him this certificate of stock or the auctioneer's bill, which he naturally understood he was to carry. I do not know as he was directed to do it. It was an understood thing.

Q. It was an understood thing between you and the paying teller. Is that what you mean?

A. I suppose you can consider it such. There was no talk or directions about doing it. I would just merely hand him the certificate of stock or receipted bills of the auctioneers on the bank due bill.

Q. Then you simply went to him, as I understood it, took him this bill with the stock and he handed you the due bill for the amount of the stock?

A. That is right.

Q. And then you took that due bill and handed it over to the person who had brought the stock? (62)

A. Yes, sir.

Q. Did you do that at the same time the stock was brought to you usually?

A. Yes, sir. The paying teller always had something to show.

Q. Did you always hand over this due bill to the man who brought you the certificate of stock?

A. I cannot answer that because it might be that the young man who brought the stock might go around to the paying teller's desk and get the due bill. It was done with my permission. I was cognizant of the transaction.

Q. Who knew of this purchase of the stock and the manner in which it was done?

A. That is a question I cannot answer. I want to answer it so it is satisfactory to you. Any one who is privileged to know; any officer of the bank or employe or anybody else.

Q. State from your own knowledge. If you do not know, do not

guess. I am asking you so far as you know who knew of that transaction?

A. Of these particular transactions?

Q. Yes.

A. Everybody was supposed to know.

(The counsel again calls the attention of the witness to his ques-
(63) tion, which is simply how many persons to his knowledge knew of this purchase of this stock and the manner in which it was done.)

A. I do not think that is fair. I do not think it is a fair question to put to me. I want to answer the questions so that Mr. Biddle can understand it.

Mr. Barnes: I think it is a fair question as Mr. Biddle has put it. He simply asked you how many persons or who knew of the purchase of the stock and the manner in which it was transferred.

The Witness: Speaking of it generally—

By Mr. Biddle:

Q. Do not speak generally.

A. The officers and directors of the bank would know.

Q. I ask you whether you can tell us who knew of these transactions which you have testified to?

A. The officers and directors of the bank.

Q. Then it was a bank transaction?

A. I do not regard it so.

Q. Was Mr. Singerly acting as the agent of the bank in purchasing this stock?

A. No, sir.

Q. Did the directors examine this book which was held by the paying teller in which he entered these transactions as miscellaneous cash?

A. The directors had not examined the bank at the time of the
(64) transaction of these occurrences. When they examined the bank they examined the book of the paying teller.

Q. When was that done?

A. The last examination by the directors?

Q. Yes.

A. I cannot recall the date, but not for several years. The directors had not examined the bank for several years.

Q. Then what officer of the bank had examined this book and known in that way of this transaction?

A. Not any that I know of.

Q. Had you told the directors, or had Mr. Singerly told the directors of these transactions with the Carsons or Mrs. Brown?

A. Not that I know of.

Q. Then what did you mean by saying that the directors and the whole bank knew of this transaction with Mrs. Brown and the Carsons?

A. Because the directors knew that Mr. Singerly was buying stock in that way.

Q. How do you know they knew?

A. The treasurer of the Chestnut Street Trust Company informed me that the directors had directed him—

(Mr. Biddle objected to the witness telling what anybody else told him, and asks that the last part of the witness' answer be stricken out, as it is not responsive to the question, as he was not asked what he was told.)

(Mr. Barnes replies that the witness having been on cross-examination (65) asked to state the grounds of his information, proceeded to state the same.)

The Witness (continuing)—to loan to Mr. Singerly on all stock of the Chestnut Street Bank bought by him.

(Objected to.)

By Mr. Biddle:

Q. That is to say, the directors of the Trust Company had directed him?

A. Had directed the treasurer to loan to Mr. Singerly on all stock purchased by him.

Q. Have you any personal knowledge that any one of the directors knew of these transactions with the Carsons or Mrs. Brown?

A. I do not suppose they would know the names, but they knew it was customary to buy the stock in that manner.

Q. Have you any personal knowledge of that fact, aside from what any person told you?

A. I have.

Q. Will you mention the name of any director who knew from you that this was being done?

A. I can give you the name of one, but he is dead; Mr. Van Schaik.

Q. Any other?

A. Mr. Cooper.

Q. Any other? Told by you I am now speaking of.

A. You want to know if the directors knew that Mr. Singerly was (66) purchasing stock in that manner. It was known to the board.

Q. Answer my question.

A. I cannot answer.

Q. You cannot answer as to any other?

A. Not now; no, sir.

Q. Can you tell me the names of any directors whom you know, or any officer whom you personally know to have examined or vouched the accounts of the paying teller at the time of these transactions?

A. No, sir.

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(67) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON.

April Session, 1898. No. 38.

SAME

vs.

ANNIE C. CARSON.

April Session, 1898. No. 39.

SAME

vs.

HAMPTON L. CARSON.

Philadelphia, April 10, 1900.

Present: Messrs. Biddle and Waters, for Plaintiff; R. C. Dale, Esq., for Defendant.

Before HON. GEORGE M. DALLAS, J.

THE COURT. Motion for non suit overruled.

DEFENDANTS' EVIDENCE.

HAMPTON L. CARSON, Sworn.

By Mr. Dale:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. The other defendants, Susan and Annie C. Carson, are your sisters?

A. Yes, sir. (68)

Q. What has been your relation to the business affairs of your sisters?

A. They have always consulted me about the matter of their investments, or changing their investments.

Q. You have in matters of this character acted together?

A. Always.

Q. How did you and your sisters become the owners of those shares in the Chestnut Street Bank?

A. My uncle, Mr. Henry Carson, a gentleman over 80 years of age, died in July of 1896. He left a will by which he divided his estate among his nephews and nieces, and my sisters and myself occupied that relation towards him together with other cousins. Among the assets of his estate were some certificates of stock in the Chestnut Street National Bank. Mr. G. Assheton Carson, my first cousin, was the executor of my uncle Henry's estate. He cut up the number of shares belonging to Mr. Henry Carson's estate among the legatees, and in the allotment ten shares were placed in the name of each of us in that way. I think we received the certificates, as stated here, in September of 1897.

Q. Mr. G. Assheton Carson, who was on the stand yesterday and identified the receipts, was the executor, and is the gentleman whom you have just referred to?

A. Yes, sir.

Q. And he handed those certificates to you and your sisters?

A. Yes, sir. (69)

Q. After receiving those shares what dividends did you receive?

A. I am not certain about those. I think I received two, possibly three dividends. Two at least.

Q. Do you remember at what rate they were?

A. No, sir; I do not.

Q. They came at the interval of the regular bank dividend?

A. They were mailed by the ordinary check to the office.

Q. During all the time that you were a shareholder in that bank had you ever received any intimation or suggestion in any way or form as to the solvency of the bank?

A. I had not the slightest idea of any kind with regard to the bank. I never heard anything to question it. I knew nothing about it. I never made any inquiry and never received any information.

Q. What were the circumstances which induced you to offer those shares for sale?

A. I always had a feeling against holding stock in a national bank, largely I think owing to the fact that I practice pretty actively at the bar and have defended people, but I think that which called my attention specifically to it was the fact that I held a conversation with Mr. Rawhn, I think the president of the Bank of the Republic, which had been going out and winding up, and he stated that there was no
(70) money for the smaller banks and it was going out of business.

Q. Will you please state what the motive was which induced you to make this sale which you are about to refer to?

A. To make a change of investment, that is all.

Q. What did you do?

A. I consulted with my sisters and told them what I was going to do myself. They said they would do the same thing. I placed all the certificates in the hands of Townsend, Whelan & Co., with instructions to sell.

Q. Townsend, Whelan & Co. are what?

A. Brokers and bankers.

By Mr. Biddle:

Q. Can you tell us when that was?

A. I think that was in September, 1897, if I mistake not.

By Mr. Dale:

Q. The certificates which have been heretofore produced are the certificates which you held?

A. Yes, sir.

Q. Those powers of attorney which are with the certificates bear the signature of whom?

A. This one signed "Anna C. Carson" is signed by my eldest sister. This power of attorney signed by myself is my own signature, and I see my sister Susan Carson's signature on the back of the other certificate.

(71) Q. What did you do with the certificates and powers thus produced?

A. I delivered them to Townsend, Whelan & Co.

Q. When did you next hear of the matter? Did you attend any sale?

A. No, I was not present at the sale. I was informed by Townsend, Whelan & Co. of what had been done.

Q. What did you receive?

A. I received the money. I was informed it had been sold at $100

a share, and I received that amount less the commissions of the auctioneer and broker.

Q. One hundred dollars a share is the par value of the shares?

A. Yes, sir.

Q. How soon after that did you receive that, and from whom?

A. I received the money from Townsend, Whelen & Co. I think the sale took place, if I am not mistaken, somewhere about the 2d of December, and in a day or so after that I got the check.

Q. Which represented the par value of the shares, less the auctioneer's and broker's commission?

A. Yes, sir.

Q. Did you attend the sale?

A. No, I was not present at the sale.

Q. Had you any knowedge of who the purchaser was at that time?

A. Not at all.

Cross-Examined. (72)

By Mr. Biddle:

Q. You say you had a feeling against holding this stock by reason of the fact that you had represented a good many people who had held bank stock, and, as I understand you to mean, had defended this particular liability.

A. No, sir; I meant that I had been counsel in all that litigation arising out of the Keystone, Spring Garden and Phoenixville Banks and the Raymond Bank at Middleton, not suits on the civil side of the court, but where I had occasion to consider the Acts of Congress relating to national banks.

Q. What was it, then, that made you feel uneasy about holding bank stock?

A. I was not uneasy at all. I simply knew that there was a liability on national bank stocks, and I preferred not to hold it.

Q. You wanted to escape that liability?

A. I wanted to change my investment. I knew nothing about the liability on that stock.

Q. But you, knowing the liability of national bank stock, sought to escape it?

A. I preferred not to hold it; yes, sir.

Q. You preferred to get in some other security where there was no liability?

A. That is entirely right. (73)

Q. Did you notice anything about the reserve fund of the Chestnut Street National Bank about the time you made this sale?

A. No, I did not, but you checked me about what I was saying with regard to Mr. Rawhn.

Q. I wanted to know whether you had any knowledge.

A. Not the slightest.

Q. Not the slightest knowledge in regard to the reserve fund of the Chestnut Street National Bank?

A. No, sir.

Q. Whether it was falling below the amount required by law?

A. No, I had no personal observation of that kind at all. I had my attention called to that fact by a remark that was made, that the reserves of other banks, including the Chestnut, had fallen off.

Q. Then, that is what you mean in your affidavit of defence, is it, when you say that your attention was called to the fact that the published statement of the bank showed a lessening of their reserve?

A. That is it. Simply in talking about it. I do not want to get in on your objection at all, but it was all part of that conversation with Mr. Rawhn.

(74) Q. Then, as I understand it, some one called your attention to the fact that the reserve of this bank was falling below what was required by law?

A. I do not know that it was falling below that required by law, but it was a diminishing reserve. That fact was mentioned.

Q. Could you explain to the jury what that means, a diminishing reserve? What does that mean when you say that a bank has a diminishing reserve? Can you explain it to me and explain it to the jury?

A. I may or may not be right in my explanation. My understanding of it is that there is a certain amount reserved, which the bank is required under the Act of Congress to keep for the protection of depositors, and that that reserve must be kept up. I do not know what the percentage is, but the fact was mentioned that among other banks that were small, some were going out of business, that the reserve of the Chestnut Street Bank was diminishing.

Q. What does that indicate?

A. I should say, without knowing anything at all specially about this case, that it indicated that the reserve was being drawn on.

Q. What does that mean? What is the full significance of the fact that the bank's reserve is being drawn on? What do you mean by that?

(75) A. That they are not keeping on deposit the percentage of reserve funds which under the Act of Congress they are required to keep for the protection of their depositors.

Q. That they are not doing a good business? Is that it?

A. That might be the inference from it, but I had no apprehension. I had nothing at all in my mind whatever.

Q. Did you make any other inquiry about this bank after being told that?

A. Not until when the news of the failure of the bank came.

Q. Then I also understand you to say you told your sisters the same facts you knew?

A. I did. I would not get out without asking them to get out.

(It is admitted by Mr. Dale that the facts of Mr. Carson's sale are identical with those of the two other defendants.)

EDWARD L. MAGUIRE, Sworn.

By Mr. Dale:

Q. What is your business now?

A. I am in the stock brokerage business.

Q. With what firm?

A. Jamison Brothers & Co.

Q. What was your business in November and the early part of (76) December, 1896?

A. I was cashier for M. Thomas & Sons.

Q. What is the business of M. Thomas & Sons?

A. Auctioneers.

Q. Where do they hold their auctions?

A. That was in 1897. I am not sure whether it was in the Philadelphia Bourse or the Philadelphia Exchange.

Q. For many years it was at the old Exchange, Third and Walnut, and subsequently it was moved to the Bourse building?

A. Yes, sir.

(Witness is shown the three certificates for ten shares each in the names of the three defendants, together with the powers of attorney which have been identified.)

Q. Did you ever see those papers before?

A. I did.

Q. Under what circumstances?

A. They were delivered to me by Townsend, Whelan & Co., brokers, after we had sold thirty shares of Chestnut Street bank stock for them on their order.

Q. That is, after there had been a public auction sale of those shares these certificates were delivered to you by Townsend, Whelan & Co.?

A. They were.

A. What did they tell you to do with them?

A. They did not tell me to do anything.

(77) Q. What did you do with them?

A. I took the certificates and powers together with the bill to Mr. Steele, who was cashier of the Chestnut Street Bank, and who was the purchaser of these shares, delivered the certificates and the bill, received a bank due bill in payment of the bill, and at that time I said to Mr. Steele, "I wish you would be sure to transfer those shares at once."

Q. Where did that conversation take place between you and Mr. Steele?

A. In Mr. Steele's office in the bank.

Q. And you then and there handed him the certificates and powers?

A. I handed him the certificates and powers and received from him a bank due bill.

Q. You said Mr. Steele was the buyer?

A. Yes, sir.

Q. Do you know whether he bought it for himself or for others?

A. I have no method of knowing that.

Q. Was Mr. Steele a constant buyer of those certificates?

A. The only buyer we ever had.

Q. Your statement was that so far as the Chestnut Street Bank was concerned, the only person who ever appeared and bid for those shares at your auction was Mr. Steele?

A. Yes, sir.

(78) *Cross-Examined.*

By Mr. Biddle:

Q. Will you look at that bill and see if that was the bill for these thirty shares of stock?

(Bill dated December 2d, 1897, to Mr. William Steele for thirty shares of the National Bank stock shown witness.)

A. Yes, sir; it is.

Q. You have sold a good deal of the stock of the Chestnut Street National Bank to Mr. Steele?

A. Quite a good deal.

Q. Could you give us any idea how much?

A. I could not possibly without looking over the books.

Q. Can you not give us any idea at all?

A. I should suppose we had a score of transactions at least with him.

Q. Do you remember the date upon which you took this stock to Mr. Steele?

A. I think it was on the 3d of December, the day following our sale. That was the usual course of procedure.

Q. Do you remember the conversation you had with him on all this score of times that you went there with stock?

A. No, I do not.

Q. Can you recollect any conversation that you had with him in regard to this stock?

A. Yes, sir.

Q. How many conversations can you recollect in regard to the (79
stock?

A. I do not recollect any other conversation.

Q. Can you explain to us why you recall this one?

A. Yes, sir; because I saw Mr. Hampton L. Carson's name as the holder of one of these certificates, and I had for years had a very warm regard for Mr. Carson, and I took on myself the responsibility of asking Mr. Steele in this instance to please make sure that the transfer was made.

Q. Why did you think that was a kindness to Mr. Carson?

A. I thought because in selling bank stock it was very advisable for the seller to get it out of his or her name.

Q. You did not think that of any of your other customers?

A. Oh, yes; we always advised it if we were asked, invariably.

Q. But in this case you did not think that was advisable for any of your other customers? You only took that precaution with Mr. Carson?

A. Mr. Carson was not a customer of ours. Townsend, Whelan & Co. were our customers.

Q. You only took this precaution in the case of Mr. Carson?

A. That is the only one I remember.

Q. You delivered this stock then to Mr. Steel?

A. I did.

Q. Who was the purchaser?

A. Yes, sir.

By Mr. Dale: (80)

Q. Mr. Carson had not said anything to you with reference to this sale? It was a mere accident you noticed his name?

A. That was all.

Defendants' counsel offer in evidence the deposition of William Steel.

Defendants' counsel offer in evidence the three stock certificates which have heretofore been produced and identified, and also the three powers of attorney attached thereto.

Defendants rest.

REBUTTING EVIDENCE.

GEORGE H. EARLE, JR., affirmed.

By Mr. Biddle:

Q. What is your business?

A. I am Receiver of the Chestnut Street National Bank.

Mr. Dale: What do you propose to prove by this witness?

(81) Mr. Biddle: I propose to prove that at the time of the sale of this stock by the defendants, to wit, on December 2, 1897, the bank was insolvent, and in the same condition that it was upon December 23, when its doors were closed, and that Mr. Singerly, to whom the stock was sold, and to whom the stock was intended to be transferred was also insolvent.

(Objected to as immaterial unless it is proposed to follow this by proof that the defendants had knowledge of such insolvency. Objection sustained. Exception noted for plaintiff.)

Testimony closed.

The Court: I may as well state that counsel for plaintiff presented eight points. There is not among these points any brief request for binding instructions. The result of the whole, if affirmed, would, of course, be binding.

Mr. Biddle: I intended not to present these points until your Honor passed upon the first point, which was a request for binding instructions for plaintiff.

The Court: I do not propose to give that binding instruction. I am asked by defendants to instruct the jury that under all the evidence in the case the verdict should be for the defendants. I propose, unless otherwise instructed by counsel, to also deny that request, reserving the point whether that is any evidence to go to the jury in support of the plaintiff's claim.

EARLE, Receiver, (82)

vs.

CARSON.

Charge of Dallas, J.:

Gentlemen of the Jury: Under an agreement of counsel made to avoid a needless consumption of public time, you are engaged in the trial of three cases, but this need lead you into no confusion, because it is conceded upon both sides that the same evidence and the facts deducible from the evidence are determinative of all the cases. Though in the little that I will have to say to you I may speak of Mr. Carson alone, without specifically referring to his sisters, you will understand that in each instance my remarks apply to the cases against the two sisters respectively as well as to that which is against Mr. Carson personally and individually.

I have been asked by counsel for the plaintiff to charge you that under all the evidence in the case the verdict should be for the plaintiff. I decline to so charge you. The defendant, on the other hand, has asked me to charge that under all the evidence in the case the verdict should be for the defendant, and I decline also to charge that point, but reserve for consideration by the Court hereafter the question whether there is any evidence to go to the jury in support of the plaintiff's claim. (83)

This case has been presented both to the Court and to the jury, by counsel on each side, with marked ability and with commendable zeal. In their addresses to the jury both counsel perhaps have extended their remarks beyond the identical questions which, in the judgment of the Court, are involved in the issue being tried, but that is not unusual, and in this case, at least, is not censurable. But the province of the Court is to endeavor to call the attention of the jury to the very issue which they are to try, the very questions which are submitted to them, under the law as the Court understands it, and the function of the jury is to apply the facts as they find them from the evidence, to the law as the Court shall lay it down.

Some reference was made by counsel to the standing of Mr. Carson in the community, and the hardship that it would be to him to require him under the circumstances to meet the demand now made upon him; and, on the other hand, some reference has been made to the hardship that would fall upon the creditors of the Chestnut Street National Bank if the liability sought to be here enforced was not enforced by the Court and jury. But neither of these considerations should enter your minds in determining your verdict. Whatever Mr. Carson's reputation in this community may be, it is (84)

enough to say that both he and Mr. Earle, the Receiver, are to be considered just like any other citizens in a court of justice. They are entitled to the presumption, which under the evidence in this case enures to both, of being men of good character. You may assume that the Receiver of this bank has brought this action in perfect good faith, and in the belief that in doing so he was discharging the duty imposed upon him by the trust confided to him. On the other hand, you may assume that Mr. Carson, in defending it, believes himself to be discharging a duty due to himself and to his sisters. No question of a personal character ought to enter into your consideration.

Let us then look at the case without regard to the parties, or being in any manner a respecter of persons. The liability here sought to be enforced is a liability imposed by the law of the land. It is imposed by an enactment of Congress, which is in these words, so far
(85) as pertinent: "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares." The question therefore in this case is whether Mr. Carson was a stockholder at the time at which there is no question he must have been a stockholder in order that he should have incurred this statutory liability, and, as I have understood counsel, there is no question about that date, namely, that he must have been a stockholder, in order to have incurred this responsibility, upon December 22 or 23, 1897. I do not know that the particular day, the difference being only between two consecutive days, is important. There can be no doubt under the evidence that Mr. Carson, on or about September 29, 1896, did become a stockholder in the Chestnut Street National Bank. Under the will of a relative, an uncle, as I remember, thirty shares, the shares here in question, which up to that time had been owned by the uncle, and upon his death formed a portion of his estate, were divided by the executor of his will so that ten shares
(86) were placed in the name of Mr. Carson and ten in each of his sisters, and there is no question that they received the certificates for those shares and receipted for them. They became stockholders and accepted the position of stockholders, subject to all the liability which resulted from the acceptance of that position. The real question then is as to whether they divested themselves of that ownership of the stock, and divested themselves of it so that under the evidence and circumstances of this case the liability here sought to be fixed upon them ceased to exist. That is the single question in the case, and inasmuch as the plaintiff has presented several points for instruction by the Court to the jury, in addition to the one which I have passed upon, and as by answering those points I can say all that

I need say about the case, I will, to avoid useless repetition, say nothing more except in answering those points, and will ask your attention distinctly to what I shall say with respect to them as covering all the questions of the law that are necessary to be explained.

Turning then to the plaintiff's points, I am asked to instruct the jury:

"1. A registered stockholder is liable for assessments unless he can show he has made a valid sale of his stock and has done all that (87)
a reasonable man could do to have a transfer made upon the stock register."

I do not understand the counsel for the plaintiff to dispute that a valid sale was made, and would be glad to be interrupted if I am mistaken as to that.

Mr. Biddle: There is no question about the actual sale having taken place. Whether it was valid under the contention I have made to your Honor about the law, is another question. There was an actual sale. There is no dispute as to that.

The Court: Then I will say as to that point, that there was an actual sale, and if there be a question as to its validity it will be one I can better dispose of under some of the later points, and I will assume for the purposes of this point, without now deciding, that the sale was a valid one, so as to reach the second branch of the proposition involved in the point immediately under consideration. Assuming, then, a valid sale, I am asked to say that if the seller had not done all that a reasonable man could do to have a transfer made upon the stock register, he would remain liable. The point is stated perhaps too strongly in one word. I do not understand the law to require a man who makes a sale of his stock to do all that a (88)
reasonable man physically "*could*" do to see to its actual transfer on the books of the corporation. I do understand that the law requires that in order to be relieved of liability as a stockholder, a stockholder who makes sale of his stock shall and must do all, in order to escape liability, that a reasonable man might and would do who in good faith sold the stock and wished it to be transferred on the books of the company. Now, as to that point, if I have made myself clear in the abstract statement, I will refer to it more concretely. What appears from what I understand to be the undisputed evidence (but the jury may correct me if I am in error) is that Mr. Carson—and you will remember that in all these instances I am speaking for the sisters as well as for him, for what he did for himself he did for them and bound them—called upon a firm of brokers and employed them to sell the stock in question; that they, for a reason which the Court can readily understand, but which is not in evidence and therefore will not be stated, instead of selling it themselves took it to a firm of auctioneers, which firm, it appears from the testimony, had

sold other large numbers of shares of this stock at different times,
(89) and placed it in their hands for sale; that it was sold at public sale, and that Mr. Steel, who was then the cashier of the Chestnut Street National Bank, became the purchaser. There is evidence in his deposition, and so far as the Court can recall (but all these statements from the evidence are made with entire submission to the jury's better recollection) not disputed, that he purchased them not for himself, but for Mr. William M. Singerly, who was then President of the Chestnut Street National Bank. As Mr. Maguire, who was an employe of Thomas & Sons, the auctioneers, has testified, he took the certificates with the powers annexed, properly signed in blank, upon the same day, or more probably the following day, if the usual habit was pursued, to Mr. Steel. Now, Mr. Steel was the purchaser either for himself or for Mr. Singerly. If his deposition be not contradicted and is believed, he was the purchaser for Mr. Singerly. Mr. Maguire might have delivered those certificates to Mr. Steel as the purchaser merely, but Mr. Steel occupied a double position. He was both the purchaser, or the agent for the purchaser, as you may find the fact to be, and he was also the cashier of the bank, and the impression made upon my mind by the evidence is very clear (again submitting the correction of that impression to you) that the
(90) cashier was the officer who saw to the transfer of stock upon the books of the company, unless by reason of sickness or for some other reason, he happened to be absent from his post of duty. Mr. Maguire's testimony you will recall, but a single phrase from it I noted, and without confining your attention to that alone, I direct your memory to it. He said that upon taking these certificates to Mr. Steel, who was then in his office at the bank, he said, "I wish you would be sure to transfer these shares at once." Now, if you believe that Mr. Maguire used that language, or substantially that language, in speaking to Mr. Steel, he could not have been addressing him as purchaser merely. He must have been addressing him as an officer of the bank, who could do the thing which he was requested to do, to wit, be sure to transfer the shares at once. The evidence to which I have referred and which happens most to have struck my mind upon that subject, you will consider with any other evidence in the case which you may think pertinent upon the question, and then determine whether or not Mr. Carson in this case did all that a reasonable man would or might have done, in good faith desiring to have those shares transferred upon the books of the bank.

(91) I had better read the second and third points together, as they can best be considered together.

Second. I am asked to say to you, "It is not sufficient if the buyer of the stock promised to make the transfer, if he fraudulently or negligently failed to have it done; the seller of the stock is liable to creditors."

Third. "If you believe the delivery of this stock was made to Mr. Steel as the agent for the purchaser and not as the cashier of the bank, the defendant did not do all that he could have done to have the stock transferred and is therefore liable."

I have read those two points together, but really, in answering the first point I seem to have answered both of these. If you believe from the evidence that all that was done with that stock by the agent of Mr. Carson, and we may assume without pausing to consider, for the purposes of this case, that the auctioneers were the agents of Mr. Carson—if you believe that through them all was done that a reasonable man would have done to require the transfer, that they were not merely delivered to Mr. Steel as purchaser, but handed to him as cashier, with instructions to promptly see to their transfer on the books, then I answer both of these points by saying that all was done by Mr. Carson, either personally or through his agents, that a rea- (92)
sonable man would have done under the circumstances.

The plaintiff's fourth point is:

"It is not necessary that the defendant should have a knowledge of the fact that the bank was in difficulties when he sold his stock. He could not sell his stock, so as to escape liability, if he had any reason whatever, to make him feel that he was not safe and had better relieve himself from liability."

I cannot affirm that point in the language in which it is stated. I think you will recall that in their arguments counsel have taken a very different view of what is meant by the sort of apprehension of danger from holding the stock that would preclude a man from selling it so as to relieve him from liability. Mr. Carson's testimony, as I recollect it, and you will give such weight to it as you think it is entitled to, was, in substance, not that he had any special apprehension with respect to this bank, or that he conceived he had any ground for any special apprehension with respect to this bank. Amongst other things he said: "I had no apprehension whatever;" but that, it is due to the plaintiff to say, was stated in answer to a question which made the answer apply to this particular bank under the particular circumstances so (93)
far as known. I think (but what you think must control) from his evidence that he disclosed to this jury that he had the same sort of apprehension about holding this stock which he had derived from his uncle that other men might have about purchasing bank stock, namely, that such stock is liable to the double responsibility imposed by the Statute; not that he had any knowledge tending to make him apprehensive, or that he did in fact apprehend that this particular bank was in immediate danger of insolvency. The law, as the Court understands it and gives it to you, is this, that the stockholder in a

national bank, however he may have derived his stock, has in general a right to sell it, and if he is moved to sell it because he is unwilling to hold a stock to which such a liability may attach, that reason for selling is not one that prevents his being relieved by such a sale from the liability. But if his design, if his purpose is, with a distinct knowledge of impending insolvency of the bank, or if he has circumstances from which he infers that this liability is about to become a positive, fixed liability, and as a mere subterfuge, or not to use so strong a word, if for the purpose of escaping a fixed liability, which
(94) he perceives or has reason to suppose is about to occur, he relieves himself or seeks to relieve himself by a sale of his stock, the sale will not avail him. Now, having said this, I will re-read that point, because it seems to be quite an important one in the case. The point is: "It is not necessary that the defendant should have a knowledge of the fact that the bank was in difficulties when he sold his stock. He could not sell his stock so as to escape liability, if he had any reason whatever, to make him feel that he was not safe and had better relieve himself from liability."

I say I do not affirm that point, because in view of what I have said I do not understand the law to be that merely because he felt himself not safe in holding a stock of that character, would be a reason to prevent his selling it and relieving himself from future responsibility, unless his fear as to safety arose from a knowledge of facts that made him specially apprehensive with regard to the particular stock that he held.

The plaintiff's fifth point is:

"If the bank was insolvent when this stock was sold and the person to whom it was sold is for any reason unable to pay the assessment, the defendant is liable and your verdict must be in favor of the plaintiff."

(95) That point is refused.

The plaintiff's remaining points will now be read and answered in their order.

"6. If you believe that the result of the sale of the stock of the defendant was to secure him the purchase money from the cash drawer of the bank whether he knew it or not, he does not come into a Court of equity with clean hands and is not entitled to equitable relief."

That point is declined.

"7. If the bank was insolvent when the defendant's stock was sold, the plaintiff is entitled to recover. The insolvency of the bank prevents a stockholder from selling his stock to escape liability."

That point, as stated, is denied.

"8. If the bank was insolvent when the stock in this case was sold,

(Copy.)

Number 464. 10 Shares.

THE CHESTNUT STREET NATIONAL BANK OF PHILADELPHIA.

This is to certify that Susan Carson entitled to ten shares of the Capital Stock of The Chestnut Street National Bank of Philadelphia.

Transferable only on the books of the said Bank. Philadelphia, Sept. 28, 1896.

WILLIAM M. SINGERLY,
President.

W. STEELE,
Cashier.

Registered this 29th day of Sept., '96, for ten shares Chestnut Street Trust and Saving Fund Co.

I. C. GARVERICK.

For value received I hereby sell, assign and transfer unto ten (10) shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint attorney, to transfer the said stock on the Books of the within named Company with full power of substitution in the premises.

Dated December 3, 1897.

SUSAN CARSON.

In presence of
CHARLES S. WHELEN.

Signature guaranteed by Townsend, Whelen & Co.

(Copy.)

Number 465. 10 Shares.

THE CHESTNUT STREET NATIONAL BANK OF PHILADELPHIA.

This is to certify that Hampton L. Carson entitled to ten shares of the Capital Stock of The Chestnut Street National Bank of Philadelphia.

Transferable only on the books of the said Bank. Philadelphia, Sept. 28, 1896.

WILLIAM M. SINGERLY,
President.

W. STEELE,
Cashier.

Registered this 29th day of Sept., '96, for ten shares Chestnut Street Trust and Saving Fund Co.

I. C. GARVERICK.

(Copy.)

Know all men by these presents, That I, Hampton L. Carson, for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto ten (10) shares of the Capital Stock of the Chestnut Street National Bank of Philadelphia, standing in my name on the books of Bank, and do hereby constitute and appoint true and lawful attorney, irrevocable, for and in name and stead, but to use, to sell, assign, transfer and set over, all or any part of the said Stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that said attorney, or substitute or substitutes, shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the 27th day of November, 1896.

HAMPTON L. CARSON. (Seal.)

Signature guaranteed by Townsend, Whelen & Co.

Sealed and delivered in the presence of
DAVID FALLOWAY.

then the liability of the defendant was fixed and even if the stock was transferred it was a voidable sale as against creditors, and the plaintiff is entitled to recover."

That point is denied.

Now I have answered all the points, and I believe in doing so I have done what I said I anticipated I would do. I have met all the questions of law really presented in the case. You will remember finally, as I said at the outset, that Mr. Carson was undoubtedly in September, (96) 1896, a stockholder in this bank. He continued to be such a stockholder down to the time of the sale by Thomas & Sons was actually made. Then the question arises, first, did he do all that a reasonable man, in good faith desirous to have his stock transferred on the books of the bank, would do to have that done? If you find that he did, then that point must of course be determined in his favor. If you find that he did not, your verdict will be for the plaintiff. Then, the other point is as to whether when he sold that stock he did it with knowledge of circumstances or of facts that induced or lead you to believe induced, him to sell that stock for the purpose of escaping a liability which he believed was impending or likely to occur with respect to the particular bank. If you find the first point in his favor and the point last spoken of in his favor, then your verdict should be for him, but if you find either of those points adversely to him your verdict should be for plaintiff.

Plaintiff's counsel excepts to the ruling of the Court on plaintiff's points.

And thereupon, the counsel for the said plaintiff did then and there (97) except to the aforesaid charge and opinion of the said Court, and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record:

The said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said Court, and requested the seal of the Judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid Judge at the request of the said counsel for the plaintiff did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 23d day of April, 1900.

GEO. M. DALLAS.

Endorsed: In the C. C. of the U. S. in and for the Eastern District of Pennsylvania. April Sessions, 1898. Nos. 37, 38, 39. Bill of Exceptions. Earle, Receiver, vs. Carson. Filed May 7, 1900, Samuel Bell, Clerk.

(98) April Sessions, 1898. No. 37.

EARLE, Rec'r,

vs.

SUSAN CARSON.

And now, to wit, on this 17th day of April, 1900, the plaintiff in the above entitled cause through his counsel moves for a rule for a new trial for the following reasons:

First. Because the learned Court erred in refusing to permit the plaintiff to show that at the time the stock of the defendant was sold the Chestnut Street National Bank was insolvent.

Second. Because the learned Court erred in refusing to allow the plaintiff to show that the person to whom the stock was sold by the defendant, was at the time insolvent and unable to respond to the assessment made upon the stock.

Third. Because the learned Court erred in refusing to affirm the second point submitted by the plaintiff, which was as follows: "It is not sufficient if the buyer of the stock promised to make the transfer, if he fraudulently or negligently failed to have it done; the seller of the stock is liable to the creditors."

Fourth. Because the learned Court erred in not affirming plaintiff's third point, to wit: "If you believe the delivery of this stock
(99) was made to Mr. Steele as the agent for the purchaser and not as the cashier of the bank, the defendant did not do all that he could have done to have the stock transferred and is therefore liable."

Fifth. Because the learned Court erred in refusing plaintiff's fifth point, which was as follows: "If the bank was insolvent when this stock was sold and the person to whom it was sold is for any reason unable to pay the assessment, the defendant is liable and your verdict must be in favor of the plaintiff."

Sixth. Because the learned Court erred in declining plaintiff's sixth point, which is as follows: "If you believe that the result of the sale of the stock of the defendant was to secure the purchase money from the cash drawer of the bank, whether he knew it or not, he does not come into a Court of equity with clean hands, and is not entitled to equitable relief."

Seventh. Because the learned Court erred in denying plaintiff's seventh point, which was as follows: "If the bank was insolvent when the defendant's stock was sold, the plaintiff is entitled to recover. The insolvency of the bank prevents a stockholder from selling his stock to escape liability."

Eighth. Because the learned Court erred in denying plaintiff's (100)
eighth point which was as follows: "If the bank was insolvent when the stock in this case was sold then the liability of the defendant was fixed, and even if the stock was transferred it was a voidable sale as against creditors, and the plaintiff is entitled to recover."

Ninth. Because the verdict of the jury was contrary to the law.

ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Plaintiff.

Endorsed: No. 37. April Session, 1898. Earle, Receiver, vs. Susan Carson. Motion for rule for a new trial. Waters, Biddle, Attys. for Plaintiff. Filed April 18, 1900, Samuel Bell, Clerk.

April Session, 1898. No. 37. (101)

EARLE, Rec'r,

vs.

SUSAN CARSON.

April Session, 1898. No. 38.

EARLE, Rec'r,

vs.

ANNIE C. CARSON.

April Session, 1898. No. 39.

EARLE, Rec'r,

vs.

HAMPTON L. CARSON.

And now, to wit, on this 12th day of April, 1900, in consequence of the sickness of the court stenographer who took the notes of testimony in the above cases, the Court hereby extends the time for the application for a new trial, and for an appeal in the above cases until the notes of testimony have been furnished, or a reasonable time, under the circumstances, shall have expired, and such reasonable time thereafter as may be necessary for making the application for a new trial and for perfecting the appeal.

GEO. M. DALLAS, J.

Agreed to. R. C. DALE, for Defts.

(102) Endorsed: Nos. 37, 38, 39. April Session, 1898. Earle, Rec'r, vs. Susan Carson. Earle, Rec'r, vs. Annie C. Carson. Earle, Rec'r, vs. Hampton L. Carson. Order and agreement to extend time for motion for a new trial, and appeal. Filed April 18, 1900, Samuel Bell, Clerk. Charles Biddle, Attorney for plaintiff.

(103) And afterwards, to wit, on the 7th day of May, 1900, came the parties aforesaid by their counsel aforesaid, and this cause being called for arguments on defendants' rule for new trial, and having been argued by counsel for the respective parties, and the Court not being fully advised in the premises takes further time for the consideration of the same.

And afterwards, to wit, on the 29th day of May, 1900, came the parties aforesaid by their counsel aforesaid, and the Court being fully advised in the premises renders the following order:

(104) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sessions, 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON.

April Sessions, 1898. No. 38.

SAME

vs.

ANNIE C. CARSON.

April Sessions, 1898. No. 39.

SAME

vs.

HAMPTON L. CARSON.

In each of the above cases the plaintiff's rule for a new trial is discharged.

GEO. M. DALLAS, J.

Endorsed: 37, 38 and 39. April, 1898. Earle, Receiver, vs. Carsons. Order discharging rule for new trial. Filed May 29, 1900, Samuel Bell, Clerk, H. R.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (105)

April Sessions, 1898. No. 37.

GEORGE H. EARLE, Receiver,

vs.

SUSAN CARSON.

Samuel Bell, Esq., Clerk: Please enter judgment in favor of the defendant and against the plaintiff on the verdict in the above entitled case.

R. C. DALE.

Endorsed: U. S. C. C. April Sess., 1898. Earle, Jr., Rec., vs. Susan Carson. Order to enter judgment. R. C. Dale. Filed May 30, 1900, Samuel Bell, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (106)

IN ASSUMPSIT.

April Session, 1898. No. 37.

GEORGE H. EARLE, JR., as Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

To the Honorable the Judges of said Court:

George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, Pa., plaintiff in the above entitled cause, feeling himself aggrieved by the verdict of the jury and the judgment entered on the 10th day of April, 1900, comes now, by Asa W. Waters, Esq., and Charles Biddle, Esq., his attorneys, and petitions said Court for an order allowing said plaintiff to prosecute a writ of error to the Honorable the United States Court of Appeals for the Third Circuit, under and according to the laws of the United States, in that behalf made and provided, and also that an order be made fixing the amount of security which the plaintiff shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this (107)

Court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Third Circuit.

And your petitioner will ever pray.

ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Plaintiff.

Allowed.

GEO. M. DALLAS, Cir. Judge.

Endorsed: In the Circuit Court of the United States in and for the Eastern District of Pennsylvania. George H. Earle, Jr., Receiver of the Chestnut Street National Bank of Philadelphia, Pa., Plaintiff, vs. Susan Carson, Defendant. No. 37, April Session, 1898. In assumpsit. Asa W. Waters, Charles Biddle, Attorneys for Plaintiff. Filed June 13, 1900, Samuel Bell, Clerk.

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(108) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN ASSUMPSIT.

April Session, 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

ASSIGNMENTS OF ERROR.

The plaintiff in error, George H. Earle, Jr., as receiver of the Chestnut Street National Bank, upon behalf of the creditors of said bank, and by direction of the Comptroller of the Currency of the United States, by Asa W. Waters, Esq., and Charles Biddle, Esq., his attorneys, now comes and says that in the record and proceedings in the above entitled cause there is manifest error in this, to wit:

That the agreement as to facts and the matters therein contained, and the evidence produced at the trial of the aforesaid action, are not sufficient in law for the said defendant to have or maintain her aforesaid judgment against the said plaintiff.

There is also error in this, to wit: That by the record aforesaid it

appears that the verdict of the jury and the judgment aforesaid given was given for the said Susan Carson against the said George H. Earle, (109)
Jr., as receiver of the Chestnut Street National Bank, whereas by the law of the land the verdict of the jury and the judgment ought to have been given for the said George H. Earle, Jr., as receiver of the Chestnut Street National Bank, against the said Susan Carson, and the said George H. Earle, Jr., as receiver of the Chestnut Street National Bank, by his attorneys aforesaid, for a more particular assignment of errors in the proceedings and record aforesaid says:

First. The Court erred in refusing to allow the plaintiff to show that at the time of the sale of this stock by the defendant on December 2, 1897, the bank was insolvent, and in the same condition that it was upon December 23, 1897, when its doors were closed.

Second. The Court erred in refusing to allow the plaintiff to show that Mr. Singerly, to whom the defendant sold her stock, was insolvent.

Third. The Court erred in refusing to charge, that under all the evidence in the case the verdict should be for the plaintiff.

Fourth. The Court erred in not affirming the second point, submitted by the plaintiff, which is as follows: "It is not sufficient if the buyer of the stock promised to make the transfer, if he fraudulently or negligently failed to have it done. The seller of the stock is liable (110)
to creditors."

Fifth. The Court erred in not affirming plaintiff's third point to wit: "If you believe the delivery of stock was made to Mr. Steele as the agent for the purchaser and not as the cashier of the bank, the defendant did not do all that she could have done to have the stock transferred, and is, therefore, liable."

Sixth. The learned Court erred in refusing plaintiff's fifth point, which was as follows: "If the bank was insolvent when this stock was sold, and the person to whom it was sold is for any reason unable to pay the assessment, the defendant is liable and your verdict must be in favor of the plaintiff."

Seventh. The Court erred in declining plaintiff's sixth point, which was as follows: "If you believe that the result of the sale of the stock of the defendant was to secure the purchase money from the cash drawer of the bank, whether she knew it or not, she does not come into a court of equity with clean hands, and is not entitled to equitable relief."

Eighth. The Court erred in denying plaintiff's seventh point, which was as follows: "If the bank was insolvent when the defendant's stock was sold, the plaintiff is entitled to recovery. The insolvency of (111)
the bank prevents a stockholder from selling his stock to escape liability."

Ninth. The Court erred in denying plaintiff's eighth point, which was as follows: "If the bank was insolvent when the stock in this case was sold, then the liability of the defendant was fixed, and even if the stock was transferred it was a voidable sale as against creditors, and the plaintiff is entitled to recovery."

Tenth. The learned Court erred in not ruling as a matter of law that a shareholder of a national banking association, under Sections 5151 and 5234 of the Revised Statutes of the United States is individually contractually responsible to pay the bank's contracts, debts and engagements, although he in good faith sold his shares at public auction, three weeks before the bank suspended payment of its obligations and closed its doors to business, if the bank at the time of such sale is in fact insolvent and the vendee and intended transferee is financially irresponsible to pay the bank's contracts, debts and engagements, as provided in the Revised Statutes aforesaid, and such selling shareholder is not released from his individual contractual liability by a delivery of his certificate and power to transfer same to the cashier of the bank with a request that the shares be transferred at once upon the
(112) books of the bank, although acting in good faith, if, at the time of such request for transfer, the bank is in fact insolvent and the intended transferee is financially irresponsible.

Eleventh. The learned Court erred in not ruling as a matter of law that the burden of proof is upon the defendant to show that everything was done by her "in such manner as may be prescribed in the by-laws or articles of association" pursuant to the provisions of Section 5139 of the Revised Statutes of the United States that careful, prudent business men could reasonably do in order to effect a transfer of their shares upon the books of the bank, and to this end the burden was upon her to either offer in evidence at the trial the by-laws or articles of association of the bank, or show that the bank had neither by-laws nor articles of association upon the subject.

Twelfth. The learned Court erred in not ruling that it is a legal presumption that defendant at the time of offering her shares for sale had notice and knowledge of the provisions of Section 5191 of the Revised Statutes of the United States and all other provisions of the National Bank Act then in force.

And the said George H. Earle, Jr., as receiver of the Chestnut Street
(113) National Bank, prays that the judgment aforesaid may be reversed, annulled and altogether held for nothing, and that he may be restored to all things to which he hath lost by occasion of said judgment, etc.

ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Plaintiff in Error.

Endorsed: In the Circuit Court of the United States in and for the Eastern District of Pennsylvania. George H. Earle, Jr., Receiver of the Chestnut Street National Bank of Philadelphia, Pa., Plaintiff, vs. Susan Carson, Defendant. No. 37. April Session, 1898. In assumpsit. Assignments of Error. Asa W. Waters, Charles Biddle. Filed June 13, 1900, Samuel Bell, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (114)

IN ASSUMPSIT.

April Session, 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

Know all men by these presents: That we, George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, Pa., as principal, and The Finance Company of Philadelphia, Pa., as surety, are held and firmly bound unto Susan Carson, defendant above named, in the sum of five hundred dollars ($500) to be paid to the said Susan Carson, her executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 7th day of June, 1900.

Whereas, the above named plaintiff, George H. Earle, Jr., as receiver of the Chestnut Street National Bank, has sued out a writ of error to the United States Circuit Court of Appeals for the Third Circuit to reverse the judgment in the above entitled cause by the Circuit Court of the United States for the Eastern District of Pennsylvania. (115

Now, therefore, the condition of this obligation is such that if the above named plaintiff, George H. Earle, Jr., as receiver of the Chestnut Street National Bank, shall prosecute said writ to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

GEORGE H. EARLE, JR., (Seal)
As Receiver of the Chestnut Street National Bank.

THE FINANCE COMPANY OF PENNSYLVANIA,
By C. William Funk, Secretary. (Seal)
(Seal of Finance Co.)

I hereby agree to the above bond.

R. C. DALE, Attorney for Defendant.

Approved. GEO. M. DALLAS, J.

Endorsed: In the Circuit Court of the United States in and for the Eastern District of Pennsylvania. George H. Earle, Jr., receiver of the Chestnut Street National Bank of Philadelphia, Pa., vs. Susan Carson, Deft. No. 37, Aprl. Session, 1898. In assumpsit. Bond. Asa W. Waters, Charles Biddle, Attys. for Plaintiff. Filed June 13, 1900, Samuel Bell, Clerk.

(116) Whereas, the case of George H. Earle, Jr., receiver of the Chestnut Street National Bank, vs. Susan Carson, United States Circuit Court, April Sessions, 1898, No. 37; George H. Earle, Jr., receiver of the Chestnut Street National Bank , vs. Annie C. Carson, United States Circuit Court, April Sessions, 1898, No. 38; and George H. Earle, Jr., receiver of the Chestnut Street National Bank, vs. Hampton L. Carson, United States Circuit Court, April Sessions, 1898, No. 39, were tried together as one suit and a writ of error was subsequently taken for the purpose of determining the matters more particularly set forth in the assignment of error;

And whereas, It is the desire of all parties that a writ of error taken in one case shall be decisive of the merits of the other two cases;

Now this agreement witnesseth, That the undersigned, the counsel for the various parties in interest in the aforesaid recited cases, do hereby agree that the writ of error taken in any one of the said three cases, shall be conclusive in all matters in controversy in the other two cases, and shall have full force and effect as though a writ of error was taken in each case separately.

RICHARD C. DALE,

Atty. for Susan Carson, Annie C. Carson, Hampton L. Carson, Defendants.

CHARLES BIDDLE,

Atty. for Complainant.

June 13, 1900.

(117) Endorsed: U. S. C. C. No. 37. April Sessions, 1898. George H. Earle, Jr., Receiver of the Chestnut Street National Bank, vs. Susan Carson. Agreement of Counsel. Filed June 20, 1900, Samuel Bell, Clerk. H. R.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA. } *sct.* (118

I, Samuel Bell, Clerk of the Circuit Court of the United States of America, for the Eastern District of Pennsylvania, in the Third Circuit, do hereby certify the foregoing to be a true, complete and faithful copy of the original pleas in proceedings in the case of George H. Earle, Jr., Receiver, vs. Susan Carson, No. 37, April Session, 1898, on file and now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 26th day of June, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

SAMUEL BELL,
Clerk of C. C.
Per George Brodbeck, Jr.

U. S. C. C. of A.

Session, 1900.

No. .

GEORGE H. EARLE, Receiver,

vs.

SUSAN CARSON.

It is hereby agreed between the undersigned counsel for the plaintiff and defendant, respectively, that the only exhibits offered in evidence at the trial which it is necessary to print are three certificates of stock with the accompanying powers of attorney of which copies are hereto annexed.

RICHARD C. DALE,
For Defendant.
CHARLES BIDDLE,
For Plaintiff.

(Copy.)

Number 463. 10 Shares.

THE CHESTNUT STREET NATIONAL BANK OF PHILADELPHIA.

This is to certify that Anne C. Carson entitled to ten shares of the Capital Stock of The Chestnut Street National Bank of Philadelphia.

Transferable only on the books of the said Bank. Philadelphia, Sept. 28, 1896.

WILLIAM M. SINGERLY,
President.

W. STEELE,
Cashier.

Registered this 29th day of Sept., '96, for ten shares Chestnut Street Trust and Saving Fund Co.

I. C. GARVERICK.

(Copy.)

Know all men by these presents, That I for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto ten (10) shares of the Capital Stock of the Chestnut Street National Bank, standing in my name on the books of the Bank and do hereby constitute and appoint true and lawful attorney, irrevocable, for and in name and stead, but to use, to sell, assign, transfer, and set over, all or any part of the said Stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that said attorney, or substitute or substitutes, shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the 2d day of December, 1897.

ANNIE C. CARSON. (Seal.)

Signature guaranteed by Townsend, Whelen & Co.

Sealed and delivered in the presence of
SUSAN CARSON.

And afterwards, to wit: on the twenty-fifth day of September, A. D. 1900, this cause being called for argument on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, before Hon. George Gray, circuit judge, and Hon. Edward G. Bradford, and Hon. John B. McPherson, district judges, and being argued by counsel for the respective parties, and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards, to wit: on the twelfth day of March, A. D. 1901, comes the parties aforesaid and the court now being fully advised in the premises renders the following opinion, to wit:

In the United States Circuit Court of Appeals for the Third Circuit, September Term, 1900.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff in Error,
v.
SUSAN CARSON, Defendant in Error.
} No. 29.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

Before Gray, circuit judge, and Bradford and McPherson, district judges.

MCPHERSON, *District Judge:*

This suit is brought by the receiver of an insolvent national bank to enforce the double liability of a shareholder. The bank was closed and the receiver was appointed on December 23, 1897, and upon that day the name of the defendant appeared upon the official list of shareholders as the owner of 10 shares of the capital stock. *Prima facie*, therefore, she was liable for the assessment that was afterwards levied by the Comptroller of the Currency; but she met this apparent liability (successfully, as the verdict shows) by offering evidence at the trial to prove that on December 2 she had sold her shares in good faith, without knowledge or suspicion that the bank was either then insolvent, or was likely to prove insolvent, and that she had done everything that was reasonably possible to procure a transfer of the shares on the books of the bank to the purchaser. Under several decisions of the Federal courts, if the evidence established these facts, a complete defence was presented to the receiver's claim; Whitney *v.* Butler, 118 U. S. 655, Richmond *v.* Irons, 121 U. S. 27, Earle *v.* Coyle, 97 Fed. 410, Mattison *v.* White, 176 U. S. 521. Recognizing the probability that the defence would be successful, the receiver attempted to reply to it by offering to prove in rebuttal, that the bank was insolvent on December 2 as well as on December 23, and that the purchaser of the shares was also insolvent at the time the sale was made to him. This evidence was objected to as immaterial unless the receiver should offer to follow it by proof that the defendant had knowledge of the insolvency of the bank and of

the insolvency of the purchaser; and, as the receiver was unable thus to follow the offer, the learned judge excluded the testimony. It should be noted, that neither in the court below, nor in this court, was it contended that the evidence was offered upon the question of the defendant's good faith. Her ignorance of the insolvency, and her good faith were conceded, and the receiver's purpose was merely to raise the question that is immediately to be stated and considered. Manifestly, if the evidence had been offered to affect the defendant's good faith, it would have been insufficient without other evidence from which her knowledge of the bank's insolvency might fairly be inferred.

It is the exclusion of this rebuttal testimony that is complained of under the only assignments of error that need be discussed. The question presented is this: In what sense does the double liability of a shareholder in a national bank become fixed when the bank becomes insolvent in fact? Is it either fixed absolutely, so that no transfer, in good faith or otherwise, to any purchaser whatever, can afterwards be made that will relieve the shareholder? Or is it so far fixed, that no valid transfer can be made, even in good faith, if the purchaser be insolvent? The plaintiff in error has referred us to cases decided in several States under their respective constitutions and statutes, that seem to support his contention concerning the nature, and time of maturity, of a shareholder's liability. These decisions hold that the liability is fixed, either absolutely or *sub modo*, by the fact of insolvency; but we do not discuss them, because the national banking act and the decisions of the Supreme Court of the United States have established a different rule in respect to shares in a national banking association. Sec. 5139 provides that such shares shall be transferred on the books of the bank as the by-laws may prescribe, and that "every person becoming a shareholder by such transfer, shall in proportion to his shares succeed to all the rights and liabilities of the prior holder of such shares." This provision has been so enlarged by the decisions already cited, that a shareholder is enabled to rid himself of his rights and liabilities by less than a transfer in fact. He will satisfy this section if he is able to prove that he sold in good faith, and that he did everything that was reasonably possible to procure the proper formal transfer on the books of the association. There is no restriction in the banking act forbidding transfer after the bank has become insolvent, or forbidding transfer to an insolvent person at any time; and if these restrictions on the right to sell are to be enforced, it is because they are imposed by the courts in obedience to considerations of public policy, or in accordance with the general principles of justice and fair dealing that are applied to test any given transaction, although no statute may have enacted these principles as rules of decision.

What answer then, do the principles of justice and fair dealing lead us to give to the question now before the court? We think the answer should be this: As Congress has imposed no restriction on the right to sell, and as the duty to transfer has been held to be fulfilled by a proper, even if an unsuccessful, effort to transfer, the seller

is bound simply to diligence, fairness and good faith in the transaction. He is not bound at his peril to know that the bank is insolvent, or that the proposed purchaser of his shares is insolvent. He is bound to take notice of any fact that may reasonably put him on inquiry concerning the insolvency of the bank or of the purchaser, and to use diligently the means of knowledge at his disposal. If he knows, or has reasonable ground to believe, that the bank is insolvent, it would be a fraud, if with intent to evade his own liability, he should sell his shares even to a solvent person; and both the receiver of the bank and the purchaser would find a court of equity ready to afford them proper redress. So also, if with similar knowledge of the bank's insolvency, or with reasonable ground for belief, a shareholder should sell to a person whom he knew to be insolvent, this would be presumably misconduct of the same nature. Such a sale could rarely withstand attack by, or on behalf of, the persons injured; for the apparent inference of intent to evade the statutory liability would almost inevitably be drawn. But, why should the unknown fact that the bank is insolvent destroy the statutory right of transfer, if the transfer is made in good faith? In our opinion, no principle of justice or fair dealing forbids such transfer, for by the very assumption the transfer is *bona fide* and in ignorance of the bank's insolvency, and the seller is therefore seeking no unfair personal advantage, but is merely exercising innocently an apparent statutory right.

Neither, as we think is the transfer under such circumstances forbidden by public policy. In the case of a transfer to a solvent purchaser, no consideration for the creditors of the bank demands that the sale be forbidden; for between two solvent persons, it is of no importance to the creditors upon which person the assessment may be levied. If the transfer be made to an insolvent person, then, although the transaction may be in good faith, no doubt the creditors of the bank are injured; but if it is sought to prevent the possibility of doing such an injury by a ruling that such transfers are invalid—and such a ruling must rest upon the ground of public policy, and not upon the ground that the ignorant and innocent shareholder has violated any principle of justice or fair dealing—we think it would be very difficult to apply the rule of policy consistently. The reason for such a decision could only be, that as the bank's creditors have, by the mere fact of the bank's insolvency, become entitled to enforce the double liability, a shareholder ought not to be allowed, even by an act done ignorantly and in good faith, to render a part of the creditors' security unavailable by a transfer to an insolvent person. We see no other ground on which the ruling could be sustained, and this ground seems to us unsatisfactory for the following reasons: First, the reason being that harm to the creditors should be prevented, an irresponsible shareholder ought to be permitted to transfer to another irresponsible person; for, in that event, the creditors would suffer no harm, and no reason would exist for restricting the statutory right to sell at will. Second; the reason, if sufficient, ought logically to be extended so as to strike down transfers to insolvent persons made while the bank was

solvent, as well as to be applied to transfers made after it had become insolvent; for the same harm is done to creditors in the one case as in the other, and in both cases a withdrawal of the statutory security ought, upon the assumption, to be prevented. Third; the rule would, or at least might, involve inquiry into the solvency of three persons, the seller, the purchaser, and the bank; and the inconvenience of such an inquiry in each of many possible suits is entitled to weight in determining the applicability of the rule. Fourth; in every litigated case, the question of the bank's solvency, at least, at a particular date before its doors were closed would be in issue; and as this question is one of fact for the determination of a jury, it is readily conceivable that, either because the amount of evidence was not the same in every case, or because different juries were disposed to take different views of the same facts, there would be conflicting verdicts concerning the bank's solvency at substantially the same instant of time. Fifth; to apply such a rule would, in the language of defendant's counsel, "introduce into all transactions an element of uncertainty; for every transaction would be subject to review, even though made in good faith, if it subsequently proved that at the date when the transfer was made the bank, if then liquidated, would have proved insolvent, and that the transferee, if called upon to pay at that day all his debts, would have been unable to respond."

To our minds, these are reasons enough for hesitating to adopt the rule that has been urged upon us. It has no authority to support it, if we except a dictum in Stuart *v.* Hayden, 169 U. S. 1. In that case, the principal point decided was, that a fraudulent transfer of shares, made after the seller knew of the bank's insolvency, and made also for the very purpose of evading the statutory liability, was invalid against the creditors of the bank; and that the receiver could pursue the seller as if the attempted sale had not been made. The learned justice who delivered the opinion of the court, after discussing and deciding this point, went on to say:

"If the bank be solvent at the time of the transfer, that is, able to meet its existing contracts, debts and engagements, the motive with which the transfer is made is of course immaterial. But if the bank be insolvent, the receiver may, at least, without suing the transferee and litigating the question of his liability, look to those stockholders who, knowing or having reason to know at the time that the bank was insolvent, got rid of their stock in order to escape the individual liability to which the statute subjected them. Whether—the bank being in fact insolvent—the transferrer is liable to be treated as a shareholder, in respect to its existing contracts, debts and engagements, if he believed in good faith at the time of transfer that the bank was solvent, is a question which, in the view we take of the present case, need not be discussed; *although he may be so treated, even when acting in good faith, if the transfer is to one who is financially irresponsible.*"

It is upon the italicised clause of this quotation that the plaintiff in error relies; but we think the clause is so obviously a remark by the way, that it cannot possibly be taken as a serious decision of a

point, which in the same breath the learned justice says "need not be discussed." It may also be true, that the language is to be understood in the sense suggested by the brief of defendant's counsel. The suggestion is in substance this: The clause merely means, that the seller may be treated as still a shareholder, if the transfer is to a person who is financially irresponsible. That is to say; from such a transfer the inference may be drawn, having due regard to the facts of the particular case, that the transaction was intended to be evasive; and in that event, the seller will continue to be a shareholder, even if he made a transfer out and out, with no secret arrangement that he was at some future time, or in some future contingency, to have the stock again, or to enjoy its profits—in other words, even if he made such a transfer as the English cases speak of as a transfer in good faith, the good faith consisting in the fact that the transfer is absolute and without reservation. Whether this suggestion be correct, we have no means of knowing. The language of the court however is certainly a dictum; and, if it means what the plaintiff in error declares it to mean, with great respect we must decline to follow it.

There is no need to discuss the assignments of error in detail. They present nothing that calls for further attention.

The judgment of the circuit court is affirmed.

Filed March 12, 1901.

In the United States Circuit Court of Appeals for the Third Circuit.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff in Error,
v.
SUSAN CARSON, Defendant in Error.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

This cause having come on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, *and* was argued by counsel.

On consideration whereof; it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause, be, and the same is hereby affirmed with costs.

Philadelphia, March 14, 1901.

JOHN B. McPHERSON, *Judge.*

United States Circuit Court of Appeals for the Third Circuit, September Term, 1900.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff in Error,
vs.
SUSAN CARSON, Defendant in Error.
} No. 29.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

And now to wit this 28th day of March, A. D. 1901, it is ordered that mandate issue to the said circuit court of the United States for the eastern district of Pennsylvania in accordance with the opinion and judgment of this court in said cause.

GEO. M. DALLAS, *Cir. Judge.*

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Whereas, lately in the circuit court of the United States for the eastern district of Pennsylvania, before you, or some of you, in a cause between George H. Earle, Jr., receiver of the Chestnut Street National Bank, plaintiff in error, against Susan Carson, defendant in error, wherein the verdict of the jury and judgment of the said circuit court entered in said cause are in the following words, viz:

"And afterwards, to wit: on the 9th day of April, 1900, the jury being called come, to wit: John C. Rowland, Oliver P. Smith, Robert Depew, Jeremiah G. Barton, George Fritz, Harrison S. Peterbaugh, James B. McLean, J. H. Redsecker, Harry Rogers, Charles Esrey, Adolph H. Kretz, John H. La Rue, who are duly empanelled, returned, chosen, tried and sworn or affirmed to speak the truth, etc., in the issue joined in this case.

And afterwards, to wit: on the 10th day of April, 1900, the jurors aforesaid upon their oaths or affirmation aforesaid, respectively do say that they find for defendant.

May 30, 1900.—Order to enter judgment filed. Judgment accordingly."

as by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals for the third circuit by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of September, in the year of our Lord one thousand nine hundred, the said cause came on to be heard before the said United States circuit court of appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now ordered and adjudged by this court that the judgment of the said circuit court in this cause, be,

and the same is hereby affirmed with costs, and that the said defendant, Susan Carson, recover against the said plaintiff, George H. Earle, Jr., receiver of the Chestnut Street national bank, twenty dollars for her costs herein expended and have execution therefor.

Philadelphia, March 14, 1901.

[Endorsed:] U. S. circuit court of appeals, third circuit. No. 29, Sept. term, 1900. George H. Earle Jr., receiver, etc. plaintiff in error *vs.* Susan Carson defendant in error. Mandate.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 2nd day of April, in the year of our Lord one thousand nine hundred and one.

WM. H. MERRICK,
Clerk of the U. S. Circuit Court
of Appeals, Third Circuit.

Costs of Defendant in Error.

Attorney.....	$20.00
	$20.00

In the Supreme Court of the United States, October Term, 1900.

GEORGE H. EARLE, JR., as Receiver of the Chestnut Street National Bank of Philadelphia, Plaintiff in Error,
vs.
SUSAN CARSON, Defendant in Error.
} No. —.

Petition in Error.

To the honorable associate justice of the United States for the third circuit:

Your petitioner, George H. Earle, Jr., as receiver of the Chestnut Street National Bank, of Philadelphia, respectfully shows that on the 21st day of May, 1898, he brought an action of assumpsit against said Susan Carson, defendant in error, in the circuit court of the United States for the eastern district of Pennsylvania under written directions of the Comptroller of the Currency of the United States for the recovery of an assessment and interest duly levied by said comptroller amounting to more than the sum of one thousand dollars, besides costs, on certain shares of the capital stock of said bank appearing upon the books thereof at the time of its insolvency in the name of said Susan Carson.

That your petitioner upon the same day brought actions of assumpsit against Annie C. Carson and Hampton L. Carson respectively in the same court upon similar obligations and claiming from

each more than one thousand dollars besides costs, and by agreement between all parties thereto the said three actions of assumpsit involving similar issues of facts and law came on to be heard as one suit before said circuit court and a jury and on April 10, 1900, a verdict in favor of the defendants was returned by the jury, and on May 30, 1900 judgments were entered of record by said court upon said verdict in each of said actions and executions were awarded thereon and thereupon your petitioner being aggrieved by reason of said judgments against him and by direction of said Comptroller of the Currency caused a writ of error to issue to the United States circuit court of appeals for the third circuit praying that said judgments be reviewed and reversed and by stipulation entered of record between all parties to said three actions, the writs of error taken in any one is to be conclusive in all matters in controversy in the other two and shall have full force and effect as though writs of error were taken in each case separately, and pursuant to said agreement a writ of error was taken in the case against said Susan Carson, defendant in error.

Your petitioner says that said writ of error came on to be heard in the said United States circuit of appeals for the third circuit at the September 1900 term thereof, and said court on the 14th day of March 1901 affirmed the judgment of said circuit court in favor of Susan Carson, defendant in error, filed an opinion to that effect and directed a mandate to issue to said circuit court to proceed in accordance with said decision and order as will appear by reference to the record and proceedings in said cause.

Your petitioner says that he is aggrieved by reason of the judgment of said United States circuit court of appeals for the third circuit in the above-entitled action and he shows that said cause is not one in which the jurisdiction of the said circuit court or of the said circuit court of appeals is dependent entirely or at all upon the fact that the opposite parties to the suit are one of them an alien and the other a citizen of the United States, or one of them a citizen of one State and the other a citizen of a different State but is dependent on the fact that your petitioner as receiver of an insolvent national bank, by appointment of the Comptroller of the Currency with the approval of the Secretary of the Treasury under the laws *and*e and provided by the Congress of the United States is an officer and agent of the United States for the winding up of the affairs of said insolvent national bank, and this action is a suit of a civil nature arising under the laws of the United States; that said judgment of said circuit court of appeals is final but the jurisdiction thereof is not final and your petitioner, directed by the Comptroller of the Currency of the United States, so to do, claims the right to remove the aforesaid judgment of said circuit court of appeals affirming the judgment of said circuit court, to this honorable court for review, etc., by writ of error by authority of statutes of the United States (section 6, of the act of March 3, 1891 c. 517, 26 Stat. 826). All of which appears in the record of the proceedings in said case which is here*to* submitted.

Your petitioner further says that this petition for a writ of error

is not filed for purposes of delay but because he believes there is manifest error in the proceedings aforesaid:

Wherefore, your petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States and for a citation and supersedeas, and he will ever pray, etc.

GEORGE H. EARLE, JR.,
As Receiver of the Chestnut Street National Bank of Philadelphia, Pennsylvania, Petitioner.
ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Petitioner.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

George H. Earle, Jr. being duly affirmed according to law declares and says that he was duly appointed receiver of said Chestnut Street National Bank of Philadelphia on or about January 29, 1898 by the Comptroller of the Currency of the United States under authority of the laws of the United States, and that as such receiver he is the petitioner in the foregoing petition and that the facts therein set forth are true to the best of his knowledge, information and belief.

GEORGE H. EARLE, JR.

Affirmed and subscribed before me this 2nd day of April A. D. 1901.

H. G. HART,
[SEAL.] *Notary Public.*

(Endorsed:) In the Supreme Court of the United States. October Term 1900. No. —. George H. Earle, Jr. as receiver of the Chestnut Street National Bank of Philadelphia, plaintiff in error, *vs.* Susan Carson, defendant in error. Petition in error. Asa W. Waters, Charles Biddle, attorneys pro petitioner. Philadelphia, Pa. Filed April 9, 1901. Wm. H. Merrick clerk.

In the Supreme Court of the United States, October Term, 1900.

GEORGE H. EARLE, JR., as Receiver of the Chestnut Street National Bank of Philadelphia, Plaintiff in Error,
vs.
SUSAN CARSON, Defendant in Error. } No. —.

Assignment of Errors.

Now comes George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, by Asa W. Waters, Esq., and Charles Biddle, Esq., his attorneys, and says that in the record of proceedings in the above-entitled action in the United States circuit court of appeals for the third circuit there is manifest error in this, to wit:

First. The plaintiff in error assigns as error the several errors set

out in the assignment of errors forming part of the record in the above-entitled action before said circuit of appeals, to wit:

1. The court erred in refusing to allow the plaintiff to show that at the time of the sale of this stock by the defendant on December 2, 1897, the bank was insolvent, and in the same condition that it was upon December 23, 1897, when its doors were closed. (See page 44 of printed Record.)

2. The court erred in refusing to allow the plaintiff to show that Mr. Singerly, to whom the defendant sold her stock was insolvent. (See page 44 of printed Record.)

3. The court erred in refusing to charge that under all the evidence in the case, the verdict should be for the plaintiff.

4. The court erred in not affirming the second point submitted by the plaintiff, which is as follows: "It is not sufficient if the buyer of the stock promised to make the transfer, if he fraudulently or negligently failed to have it done. The seller of the stock is liable to creditors."

5. The court erred in not affirming plaintiff's third point, to wit: "If you believe the delivery of stock was made to Mr. Steele as the agent for the purchaser and not as the cashier of the bank, the defendant did not do all that she could have done to have the stock transferred, and is, therefore, liable."

6. The learned court erred in refusing plaintiff's fifth point which was as follows: "If the bank was insolvent when this stock was sold, and the person to whom it was sold is for any reason unable to pay the assessment, the defendant is liable, and your verdict must be for the plaintiff." (See page 50 of printed Record.)

7. The court erred in declining plaintiff's sixth point which was as follows: "If you believe that the result of the sale of the stock of the defendant was to secure the purchase-money from the cash drawer of the bank, whether she knew it or not, she cannot even come into a court of equity with clean hands, and is not entitled to equitable Relief."

8. The court erred in denying plaintiff's seventh point, which was as follows: "If the bank was insolvent when the defendant's stock was sold, the plaintiff is entitled to recovery. The insolvency of the bank prevents a stockholder from selling his stock to escape liability." (See page 50 of printed Record.)

9. The court erred in denying plaintiff's eighth point, which was as follows: "If the bank was insolvent when the stock in this case was sold, then the liability of the defendant was fixed, and even if the stock was transferred it was a voidable sale as against creditors, and the plaintiff is entitled to recovery" (see page 50 of printed Record).

10. The learned court erred in not ruling as a matter of law, that a shareholder of a national banking association, under sections 5151 and 5234 of the Revised Statutes of the United States, is individually contractually responsible to pay the bank's contracts, debts and engagements, although he in good faith sold his shares at public auction three weeks before the bank suspended payment of its obligations and closed its doors to business, if the bank at the time of

such sale is in fact insolvent and the vendee and intended transferee is financially irresponsible to pay the bank's contracts, debts and engagements as provided in the Revised Statutes aforesaid, and such selling shareholder is not released from his individual contractual liability by a delivery of his certificate and power to transfer same to the cashier of the bank with a request that the shares be transferred at once upon the books of the bank, although acting in good faith, if, at the time of such request for transfer, the bank is in fact insolvent and the intended transferee is financially irresponsible.

11. The learned court erred in not ruling as a matter of law that the burden of proof is upon the defendant to show that everything was done by her "in such manner as may be prescribed in the by-laws or articles of association" pursuant to the provisions of section 5139 of the Revised Statutes of the United States that careful, prudent business men could reasonably do in order to effect a transfer of their shares upon the books of the bank, and to this end the burden was upon her to either offer in evidence at the trial the by-laws or articles of association of the bank, or show that the bank had neither by-laws nor articles of association upon the subject.

12. The learned court erred in not ruling that it is a legal presumption that defendant, at the time of offering her shares for sale, had notice and knowledge of the provisions of section 5191 of the Revised Statutes of the United States and all other provisions of the national bank act then in force.

Second. The said circuit court of appeals for the third circuit before which was heard the writ of error which brought up the record in this action from the circuit court of the United States for the eastern district of Pennsylvania to said circuit court of appeals erred in making its order on the 14th day of March 1901 affirming the judgment of the said circuit court and directing the mandate to issue to the said circuit court directing that court to proceed in accordance with the decision and order of said circuit court of appeals.

Third. That the learned circuit court of appeals for the third circuit erred in not making an order upon the law and evidence in the case reversing the judgment of said circuit court and directing the said circuit court to enter judgment as of March 14, 1901 for the plaintiff in error and against the said defendant in error, Susan Carson in the sum of one thousand one hundred seventy-five and $\frac{33}{100}$ dollars, besides costs, because,

(*a.*) That said Susan Carson had some notice through her brother before offering her stock for sale that the bank was in a failing condition, to wit, that its reserve fund was less than that required by law and it put her upon inquiry as to the true financial condition of the bank, and even if selling in good faith as between herself—a shareholder—and creditors both being innocent parties, she as a shareholder is liable and her sale of the shares to escape the liability of a shareholder.

(*b.*) That if the sale was made to William Steele, individually or to him as agent of William M. Singerly, the president of the bank, the delivery of the certificate of stock for transfer to him was not a

delivery to the bank. (See Record pages 4, 42, 43, testimony of Edward L. Maguire.)

(*c.*) That if the sale was made to William Steele as cashier of the bank, for the bank, the defendant in error had notice of its invalidity under section 5201 U. S. Rev. Stat. and the payment *of* her of a clearing-house due bill by the cashier, showing on its face that the funds paid were those of the bank put her upon inquiry as to the real purchaser. (See Record pages 23, 25, 27, testimony of William Steele.)

(*d.*) That no actual transfer was ever made upon the books of the bank of the shares from the name of the defendant in error, and the record does not show that the request, if made, was for a transfer in the manner prescribed by the by-laws or articles of association of the bank, as required by section 5139, U. S. Rev. Stat. No offer of the by-laws nor proof that the bank is without by-laws is in evidence.

Fourth. That the learned circuit court of appeals for the third circuit erred in not reversing the ruling of said circuit court upon exception noted for the plaintiff at the trial, wherein it refused to permit the plaintiff in error to show to the jury that the bank at the time of the sale of the shares by the defendant in error was in fact insolvent and in the same condition that it was on December 23, 1897, when its doors were closed, and that the liability to its creditors, as holders thereof, had become fixed and attached to her individually that she could not relieve herself therefrom by a sale, although made in good faith, if to one financially irresponsible, and that the intended transferee of the shares was in fact insolvent and unable to respond to the creditors of the bank for its contracts, debts and liabilities, and this he offered to prove. (See page 44, testimony of Geo. H. Earle, Jr.)

Fifth. That the circuit court of appeals for the third circuit erred in not sustaining the writ of error then before it and in not reversing the judgment entered in this action in said circuit court.

And said George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, the plaintiff in error prays that the judgment aforesaid entered herein in the circuit court of the United States for the eastern district of Pennsylvania, and the order entered herein as aforesaid by the United States circuit court of appeals for the third circuit and the judgment of affirmance to be entered in said circuit court upon said order of affirmance, *be* for the errors aforesaid, and for other errors in the record and proceedings aforesaid, be reversed, annulled and altogether held for naught, and that the plaintiff in error may be restored to all things which he hath lost by reason of said judgment and order.

ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Plaintiff in Error.

(Endorsed:) In the Supreme Court of the United States. October term 1900. No. —. George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, plaintiff in error,

vs. Susan Carson, defendant in error. Assignment of errors. Asa W. Waters, Charles Biddle, attorneys pro plaintiff in error. Philadelphia, Pa. Filed April 9, 1901. Wm. H. Merrick clerk.

In the Supreme Court of the United States, October Term, 1900.

GEORGE H. EARLE, JR., as Receiver of the Chestnut Street National Bank of Philadelphia, Plaintiff in Error,
vs.
SUSAN CARSON, Defendant in Error.
} No. —.

Bond for Costs.

Know all men by these presents, that we George H. Earle, Jr., as receiver of the Chestnut Street national bank, as principal and the Finance Company of Pennsylvania, a corporation under the laws of the Commonwealth of Pennsylvania, with its principal office in the city of Philadelphia, as surety, are held and firmly bound unto Susan Carson, defendant in error, above named, in the sum of five hundred dollars ($500) to be paid to the said Susan Carson her executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the first day of April 1901.

Whereas the above-named plaintiff in error, George H. Earle, Jr., as receiver of the Chestnut Street national bank, has sued out a writ of error to the Supreme Court of the United States to reverse the judgments in the above-entitled cause by the United States circuit court of appeals for the third circuit and the circuit court of the United States for the eastern district of Pennsylvania in the above-entitled cause.

Now therefore, the condition of this obligation is such that the above-named George H. Earle, Jr., as receiver of the Chestnut Street national bank shall prosecute said writ to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

GEORGE H. EARLE, JR., [SEAL.]
As Receiver of the Chestnut St. National Bank of Philadelphia.
THE FINANCE COMPANY OF PENNSYLVANIA,
By GEORGE H. EARLE, JR. [SEAL.]
Pl.

[Seal of Company.]

Attest: C. WILLIAM FUNK, *Secretary.*

Approved,

—— ——,
Attorney for Susan Carson.

Allowed,
GEORGE SHIRAS, JR.,
Justice of the Supreme Court of the United States.

(Endorsed:) In the Supreme Court of the United States. October term 1900. No. —. George H. Earle Jr., as receiver of the Chestnut Street National Bank of Philadelphia, plaintiff in error, *vs.* Susan Carson, defendant in error. Bond for costs.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals before you or some of you, between George H. Earle, Jr., receiver of the Chestnut Street national bank, plaintiff in error, and Susan Carson, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of April, in the year of our Lord one thousand nine hundred and one.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

To Susan Carson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the third circuit, wherein George H. Earle, Jr., receiver of the Chestnut Street national bank, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against

the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 8th day of April, in the year of our Lord one thousand nine hundred and one.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

I accept service of the within citation for the defendant in error.

RICHARD C. DALE.

April 9, 1901.

UNITED STATES OF AMERICA, *set:*

I, William H. Merrick, clerk of the United States circuit court of appeals, for the third circuit, do hereby certify the foregoing pages from one to eighty-nine inclusive to contain a full, true, complete and faithful copy of the original transcript of record and proceedings in the case wherein George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, is plaintiff in error, and Susan Carson is defendant in error, on file and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twelfth day of April, in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-fifth.

Seal United States Circuit Court of Appeals, Third Circuit.

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

Endorsed on cover: File No. 18,119 U. S. C. C. of appeals—3rd circuit. Term No. 299 George H. Earle Junior, receiver of the Chestnut Street national bank—plaintiff in error—*vs.* Susan Carson. Filed April 16th, 1901.

No. 83

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JAMES H. McKENNEY,
Clerk

No. 299. October Term, 1901.

Brf. of Waters for P.

Supreme Court of the United States.

Filed July 1, 1902.

GEORGE H. EARLE, JUNIOR,
Receiver of The Chestnut Street National Bank, Plaintiff in Error,

vs.

SUSAN CARSON.

In Error to the United States Circuit Court of Appeals for the Third Circuit.

Transcript filed April 16, 1901.
(18,119.)

BRIEF OF PLAINTIFF IN ERROR.

ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Plaintiff in Error.

T. C. DAVIS & SONS, PRINTERS, PHILA.

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Supreme Court of the United States.

October Term, 1901. No. 299.

GEORGE H. EARLE, JUNIOR, RECEIVER OF THE CHESTNUT STREET NATIONAL BANK, PLAINTIFF IN ERROR,

VS.

SUSAN CARSON.

In Error to the United States Circuit Court of Appeals for the Third Circuit.

Transcript filed April 16, 1901.
(18,119.)

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

(The page references in brief are to transcript of record.)

The Chestnut Street National Bank was duly incorporated and organized under the National Banking Act, and did a banking business for many years in the City of Philadelphia, Pennsylvania. The capital stock of said banking associ-

ation is $500,000, divided into 5000 shares of $100 each (pp. 5, 6). The Comptroller of the Currency of the United States closed the bank's doors to business on December 23, 1897, and on January 29, 1898, George H. Earle, Jr., was appointed by the Comptroller its Receiver and was duly qualified as such. On April 1, 1898, the Comptroller made an order, under Sections 5151 and 5234 Revised Statutes of the United States, for an assessment of 100 per cent. upon the bank's capital stock for the benefit of its creditors, and the Receiver was directed in writing to collect the same by suit or otherwise from each shareholder (p. 12).

Susan Carson (defendant in error) became the owner of ten shares of the stock of the bank on September 29, 1896, and was duly entered upon the stock ledger, and registered by the Chestnut Street Trust and Saving Fund Company, as appears on certificate No. 464, issued by the bank in her name, dated September 28, 1896 (p. 63). Her name appears in the official list of shareholders required to be kept by the provisions of Section 5210, of the Revised Statutes, and the shares have so continued to be registered in her name without change, and were so registered on April 1, 1898, when the

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assessment was made by the Comptroller. It is conceded that the defendant is *prima facie* a shareholder liable to creditors for the assessment.

The present action was brought by the Receiver to recover the assessment made by the Comptroller of the Currency upon the stock of Susan Carson so registered in her name.

The Receiver proved at the trial that the defendant appeared as the registered owner of ten shares of stock; that the bank closed its doors upon December 23, 1897; and that the Comptroller of the Currency had made an assessment on the stock of 100 per cent.

The defendant denied the right of the Receiver to recover, and as her defence produced testimony to show that, on December 2, 1897, three weeks before the bank's doors closed, she offered her shares for sale at public auction, and they were knocked down to one William Steele, the only bidder who bid par for them, that when payment was made, she delivered to him the certificate with an assignment and power of attorney attached executed in blank, and requested that the transfer be entered on the bank's books, that this was all she could do to complete the transfer. William Steele was cashier of the bank at the time. He bought

the stock for the account of William M. Singerly, president of the bank, but this was not known to the defendant until after the bank's public failure.

It was shown at the trial that the money of the bank was fraudulently abstracted to pay for the stock which was thus purchased from the defendant, and that Mr. Steele, upon behalf of Mr. Singerly, took the defendant's certificate, put it in the cash drawer of the bank, and called it a cash item.

The specific cause for defendant's offering her shares for sale, it was testified, was the fact that the "reserve fund" of the bank was below the amount required by law, and was diminishing (pp. 38–40).

The plaintiff, in rebuttal, offered to prove that the alleged assignment of the stock by the defendant *was void*, and as to creditors she remained a stockholder of the bank when the assessment was made. The reasons given why the assignment was void were as follows:

First.—The plaintiff offered to show that the bank was insolvent when the defendant offered her stock for sale on December 2, 1897, and was in the same condition that it was upon December 23, 1897, when its doors were closed.

Second.—The plaintiff further offered to show that Mr. Singerly, to whom the stock was sold by the defendant, was insolvent at the time of the sale, and was now unable to respond to the assessment.

Third.—That the specific cause of offering the shares for sale was that the reserve fund of the bank was below the amount required by law, and this was notice and should have put her upon inquiry as to the failing condition of the bank.

Fourth.—That the defendant did not show that she had complied with the by-laws or articles of association of the bank when she attempted to establish that she had transferred her shares of stock, nor that the bank was without articles and by-laws.

Fifth.—That the payment by Steele of the bank's funds put her upon inquiry as to the fraudulent abstraction of the funds of the bank.

The Court declined to permit the plaintiff to establish his first and second offer, and sustained the objection of the defendant that such proof was inadmissible unless it was shown that the defendant had knowledge of the insolvency of the bank at the time she made the assignment. The Court further overruled the other reasons advanced by the plaintiff to

show that the assignment was void, and declined to give binding instructions to the jury. Exceptions were taken to these rulings, and upon writ of error to the Circuit Court of Appeals, that Court sustained the Trial Court, and the present writ of error was taken.

The three suits of George H. Earle, Jr., Receiver of the Chestnut Street National Bank, against Susan Carson, Annie C. Carson, and Hampton L. Carson, were tried as one case, each of these defendants having ten shares of stock in the Chestnut Street National Bank, and upon each ten shares one thousand dollars with interest from April 1, 1898, was due. It was agreed by counsel that the facts in all three cases were similar.

A verdict was rendered in favor of the defendants.

ASSIGNMENT OF ERRORS.

(See pages 73 to 76 of Record.)

First.—The plaintiff in error assigns as error the several errors set out in the Assignment of Errors forming part of the record in the above entitled action before said Circuit Court of Appeals, to wit:

1. The Court erred in refusing to allow the plaintiff to show that at the time of the sale of this stock by the defendant, on December 2, 1897, the bank was insolvent, and in the same condition that it was upon December 23, 1897, when its doors were closed. (See p. 44 of printed Record.)

2. The Court erred in refusing to allow the plaintiff to show that Mr. Singerly, to whom the defendant sold her stock, was insolvent. (See p. 44 of printed Record.)

3. The Court erred in refusing to charge that under all the evidence in the case the verdict should be for the plaintiff.

4. The Court erred in not affirming the second point submitted by the plaintiff, which is as follows: "It is not sufficient if the buyer of the stock promised to make the transfer, if he fraudulently or negligently failed to have done it. The seller of the stock is liable to creditors."

5. The Court erred in not affirming plaintiff's third point, to wit: "If you believe the delivery of the stock was made to Mr. Steele as the agent for the purchaser and not as the cashier of the bank, the defendant did not do all that she could have done to have the stock transferred, and is, therefore, liable."

6. The learned Court erred in refusing plaintiff's fifth point, which was as follows: "If the bank was insolvent when the stock was sold, and the person to whom it was sold is for any reason unable to pay the assessment, the defendant is liable, and your verdict must be for the plaintiff." (See p. 50 of printed Record.)

7. The Court erred in declining plaintiff's sixth point, which was as follows: "If you believe that the result of the sale of the stock of the defendant was to secure the purchase money from the cash drawer of the bank, whether she knew it or not, she cannot even come into a court of equity with clean hands, and is not entitled to equitable relief."

8. The Court erred in denying plaintiff's seventh point, which was as follows: "If the bank was insolvent when the defendant's stock was sold, the plaintiff is entitled to recovery. The insolvency of

the bank prevents a stockholder from selling his stock to escape liability." (See p. 50 of printed Record.)

9. The Court erred in denying plaintiff's eighth point, which was as follows: "If the bank was insolvent when the stock in this case was sold, then the liability of the defendant was fixed, and even if the stock was transferred it was a voidable sale as against creditors, and the plaintiff is entitled to recovery." (See p. 50 of printed Record.)

10. The learned Court erred in not ruling as a matter of law that a shareholder of a national banking association, under Sections 5151 and 5234 of the Revised Statutes of the United States, is individually contractually responsible to pay the bank's contracts, debts and engagements, although he in good faith sold his shares at public auction three weeks before the bank suspended payment of its obgliations and closed its doors to business, if the bank at the time of such sale is in fact insolvent and the vendee and intended transferee is financially irresponsible to pay the bank's contracts, debts and engagements as provided in the Revised Statues aforesaid, and such selling shareholder is not released from his individual contractual liability

by a delivery of his certificate and power to transfer same to the cashier of the bank with a request that the shares be transferred at once upon the books of the bank, although acting in good faith, if, at the time of such request for transfer, the bank is in fact insolvent and the intended transferee is financially irresponsible.

11. The learned Court erred in not ruling as a matter of law that the burden of proof is upon the defendant to show that everything was done by her "in such manner as may be prescribed in the by-laws or articles of association" pursuant to the provisions of Section 5139 of the Revised Statutes of the United States that careful, prudent business men could reasonably do in order to effect a transfer of their shares upon the books of the bank, and to this end the burden was upon her to either offer in evidence at the trial the by-laws or articles of association of the bank, or show that the bank had neither by-laws nor articles of association upon the subject.

12. The learned Court erred in not ruling that it is a legal presumption that defendant, at the time of offering her shares for sale, had notice and knowledge of the provisions of Section 5191 of the

Revised Statutes of the United States and all other provisions of the National Bank Act then in force.

Second.—The said Circuit Court of Appeals for the third circuit, before which was heard the writ of error which brought up the record in this action from the Circuit Court of the United States for the Eastern District of Pennsylvania to said Circuit Court of Appeals, erred in making its order on the 14th day of March, 1901, affirming the judgment of said Circuit Court and directing the mandate to issue to the said Circuit Court directing that Court to proceed in accordance with the decision and order of said Circuit Court of Appeals.

Third.—That the learned Circuit Court of Appeals for the third circuit erred in not making an order upon the law and evidence in the case reversing the judgment of said Circuit Court, and directing the said Circuit Court to enter judgment as of March 14, 1901, for the plaintiff in error, and against the said defendant in error, Susan Carson, in the sum of $1,175.33, besides costs, because,

(*a*) That said Susan Carson had some notice through her brother before offering her stock for sale that the bank was in a failing condition, to

wit, that its reserve fund was less than that required by law, and it put her upon inquiry as to the true financial condition of the bank, and even if selling in good faith as between herself—a shareholder—and creditors, both being innocent parties, she as a shareholder is liable, and her sale of the shares to escape the liability of a shareholder.

(*b*) That if the sale was made to William Steele, individually, or to him as agent of William M. Singerly, the president of the bank, the delivery of the certificate of stock for transfer to him was not a delivery to the bank. (See Record, pp. 4, 42, 43, testimony of Edward L. Maguire.)

(*c*) That if the sale was made to William Steele as cashier of the bank, for the bank, the defendant in error had notice of its invalidity under Section 5201, United States Revised Statutes, and the payment to her of a clearing-house due bill by the cashier showing on its face that the funds paid were those of the bank put her upon inquiry as to the real purchaser. (See Record, pp. 23, 25, 27, testimony of William Steele.)

(*d*) That no actual transfer was ever made upon the books of the bank of the shares from the name of the defendant in error, and the record does not

show that the request, if made, was for a transfer in the manner prescribed by the by-laws or articles of association of the bank, as required by Section 5139, United States Revised Statutes. No offer of the by-laws nor proof that the bank is without by-laws is in evidence.

Fourth.—That the learned Circuit Court of Appeals for the third circuit erred in not reversing the ruling of said Circuit Court upon exception noted for the plaintiff at the trial, wherein it refused to permit the plaintiff in error to show to the jury that the bank at the time of the sale of the shares by the defendant in error was in fact insolvent and in the same condition that it was on December 23, 1897, when its doors were closed, and that the liability to its creditors, as holders thereof, had become so fixed and attached to her individually, that she could not relieve herself therefrom by a sale, although made in good faith, if to one financially irresponsible, and that the intended transferee of the shares was in fact insolvent and unable to respond to the creditors of the bank for its contracts, debts and liabilities, and this he offered to prove. (See p. 44, testimony of George H. Earle, Jr.)

Fifth.—That the Circuit Court of Appeals for the third circuit erred in not sustaining the writ of error then before it, and in not reversing the judgment entered in this action in said Circuit Court.

ARGUMENT.

The plaintiff in error contends first that the assignment made by the defendant was void, for the following reason:

A stockholder in a national bank cannot escape liability for an assessment on her stock by selling that stock to an insolvent person after the bank has become insolvent, and ignorance on her part of the bank's insolvency is immaterial. This question is presented by the First, Second, Sixth, Eighth and Ninth Assignments of Error, which are set out on pages 7, 8 and 9 of this brief.

If this contention is sound it is unimportant what steps the defendant in error took to have her stock transferred upon the books of the bank; if such transfer had been actually made, she would still remain a stockholder liable to the assessment, if the assignment was void by reason of her statutory liability.

The trial Court held that the present Receiver must show, in order to set aside the assignment set up as a defence, not only that the bank was insolvent at the time the defendant sold her stock, but that *she knew it or had notice of it* when she made

the sale to the insolvent purchaser and sold her stock with an *intent* to escape a threatened liability.

In determining whether this ruling is correct, it is first necessary to examine into the character of the undertaking between a stockholder of a national bank and a creditor.

Section 5151 of the Revised United States Statutes imposes the obligation upon the stockholder in the following words:

> "The shareholders of every national banking association shall be held individually responsible, equally and ratably and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof in addition to the amount invested in such shares."

The liability imposed by this Act constitutes a contract between the creditors of the bank and the persons who are its stockholders when the debt is contracted.

Morse on Banking gives the case of **Iron vs. Manufacturers' National Bank,** 21st Federal Rep., p. 197 (1884), for his authority as to the liability imposed by this Act. In that case the Judge says:

> "So far as the clause of the National Bank Act which I have quoted (which was Sec. 5151) has been construed by the Court, it seems to me to have been assumed that it was the intention of Congress to

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make this a contract liability. . . . From all the various provisions of the Act, it seems to me that it was the intention of Congress to make this liability . . . an asset of the bank, to be resorted to in the event of insolvency. . . ."

Morawetz on Private Corporations, Vol. 2, Sec. 870, states the relationship between shareholder and creditors as follows:

"If the company's charter provides that the shareholders shall be subject to a special individual liability to creditors, persons becoming shareholders agree to become liable, both in a corporate capacity and individually, to all persons who shall give credit to the corporation. They offer to all the world to become liable in their corporate capacity, to the extent of the capital which they have agreed to contribute for the purpose of carrying on the company's business, and they offer to become liable individually to the amount expressly provided by their charter or incorporation law. Parties who contract with the corporation contract upon the faith of this liability, held out as their security; and the offer of the shareholders, being thereby accepted, ripens into a binding contract."

In **Hobart vs. Johnson,** 8th Federal Rep., p. 495 (1881), Blatchford, J., says:

"Every creditor of the bank, becoming such, becomes, *eo instante,* a creditor of the shareholder in respect to the liability in question. The shareholder becomes thereby a principal debtor. The debt of the bank is his debt at the instant of its creation, and the debt of the bank is referred to only as a measure of the debt of the shareholder. . . . The idea of

guaranty or suretyship, or of a promise to pay the debt or answer for the liability of another, is altogether destroyed by the fact that the debt of the bank is incurred for the benefit of the shareholders exclusively, and is thus the debt of the shareholder as a principal."

In **Whitman vs. Oxford National Bank** (1900), 176 U. S., 559, this Court says, through Mr. Justice Brewer, on page 565:

"In *Richmond vs. Irons*, 121 U. S., 27, in which the question presented was whether the individual liability of a stockholder in a national bank survived as against his administrator, it was said (p. 55):

"'Under that Act the individual liability of the stockholders is an essential element in the contract by which the stockholders became members of the corporation. It is voluntarily entered into by subscribing for and accepting shares of stock. Its obligation becomes a part of every contract, debt and engagement of the bank itself, as much so as if they were made directly by the stockholder instead of by the corporation. There is nothing in the statute to indicate that the obligation arising under these undertakings and promises should not have the same force and effect, and be as binding in all respects as any other contracts of the individual stockholder.'"

"In *Concord National Bank vs. Hawkins*, 174 U. S., 364, 372 (1899), in which one national bank was sought to be charged as a stockholder in another national bank, was this declaration:

"In the present case it is sought to escape the force of these decisions by the contention that the liability of the stockholder in a national bank to respond to an assessment in case of insolvency is not contractual, but statutory.

> "Undoubtedly, the obligation is declared by the statute to attach to the ownership of the stock, and in that sense may be said to be statutory. But as the ownership of the stock in most cases arises from the voluntary act of the stockholder, he must be regarded as having agreed or contracted to be subject to the obligation."

It is so well settled by this Court that the obligation of the shareholder to creditors, within the meaning of Section 5151 Revised Statutes, is in every particular a contract entered into voluntarily by the shareholder when he becomes such, it is unnecessary to quote further authorities.

The liability of the stockholder attaches when the bank becomes insolvent.

The obligation on the part of the stockholder has been directly decided in **Stuart vs. Hayden,** 169 U. S., p. 8 (1898), to be a contractual one, and one that attaches when the bank becomes insolvent. This Court states:

> "The safety of national banking associations, so far as its creditors are concerned, depends largely upon the security given by the statutory provision entitling creditors to look to the individual liability of shareholders. . . . . .
>
> "The right of creditors of a national bank to look to the individual liability of shareholders, to the extent indicated by the statute, for its contracts,

debts and engagements, *attaches when the bank becomes insolvent*, and the shareholder cannot, by transferring his stock, require creditors to surrender this security as to him, and compel the receiver and creditors to look to the person to whom his stock has been transferred. This Court has said that 'the individual liability of the stockholders is an essential element in the contract by which the stockholders became members of the corporation. It is voluntarily entered into by subscribing for and accepting shares of stock. Its obligation becomes a part of every contract, debt and engagement of the bank itself, as much so as if they were made directly by the stockholder instead of by the corporation.'"

The liability of the stockholder is therefore a contractual one, the obligation "*attaches when the bank becomes insolvent*," and when that event happens the stockholder should not be permitted to escape his liability.

The Act should be construed strictly.

The Act of Congress limiting the liability of the stockholder to double the amount of his stock is in derogation of the common law liability of partners, and should be strictly construed, and the double liability imposed should be as carefully guarded as is the obligation to pay the original subscription to the stock.

The statutes of the United States encourage creditors to trust to their right of recovery against the

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stockholders. Section 5210 provides that a list of the stockholders shall be kept for the inspection of the creditors so that they may find out to whom they may have the privilege of looking for the payment of their debts upon the insolvency of the bank; and as was said in **Langtry vs. Wallace,** 97 Fed. Rep., p. 867 (1899):

> "All persons are, in law, presumed to extend credit to corporations, and especially to national banks, whose shares are subject to a double assessment, in reliance upon the amount of their issued capital stock, although they do not know accurately by whom such stock is at the time held."

In **Upton vs. Englehart,** 3 Dill., p. 496, Fed. Cas. No. 16,800 (1875), the Court says:

> "If a person has accepted a certificate of stock, and becomes, to all external appearance, a stockholder, persons may have become creditors of the company on the faith of his membership, and in law are presumed to do so."

A creditor knows the stockholders may change from time to time, but he should be allowed to feel certain that the *right of transfer ceases upon the insolvency of the bank*, and that when Section 5210 provides that the list of all the stockholders with their addresses and the number of shares held by each shall be kept at the bank subject to creditors' inspection, it is not intended that there shall be

held out to him a security that may not only change in times of prosperity but may disappear in the time of adversity; this would be setting a trap for the careful man and using the Act of Congress but as a bait to catch him.

This Court has said that the obligation of the stockholder to pay "*attaches when the bank becomes insolvent.*" It is inconsistent with this ruling for the lower Court to hold that both insolvency and knowledge must be shown before the obligation becomes binding; it is placing an additional requisite not authorized by the higher Court. The stockholder contracts to be responsible upon the happening of a certain event; he cannot remain in ignorance of that event and present that ignorance as a defence to the binding effect of his agreement.

In no other instance is a suitor upon a contract required to show the frame of mind of his obligor when the time for performance arrives.

It is hard to conceive that a creditor, before he can recover from a stockholder, must say to him: You contracted to repay me to the extent of your stock if the bank became insolvent or unable to fulfill its contract with me; I find you assigned your stock after that event happened, to one who cannot pay

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the assessment. When you made the sale did you know that your obligation to pay me had matured? If you did not know it, I cannot recover.

It is a matter of indifference how pure the action of the stockholder may be or how small his knowledge; he becomes liable by reason of the happening of the contingency against which he had contracted, and he should not be allowed to escape from the obligation, by an assignment to an insolvent person.

If want of knowledge is to be a protection to a stockholder it would place a premium upon ignorance, and stimulate stockholders to take as little interest as possible in a corporation which they hold out to the world they are conducting and whose profits they are sharing.

What right has a stockholder to plead ignorance? He should have known the condition of the bank of which he is a part, and if he does not know it, it is because his own agents, the officers of the bank, have concealed it from him; and if they have done so the stockholder should not be allowed to profit by their fraud and escape liability. If the stockholder is ignorant it is an ignorance of facts that he should have known and is no excuse. *Ignorantia eorum quae quis scire tenetur non excusat*, Broom Max, 253. The statutes permit him to enter into

the business of banking with a limited liability; the privileges of such a partnership should not be extended to permitting the employment of agents whose knowledge can in no way affect their principals.

Decisions of the Courts upon the subject.

This Court has never had occasion to consider whether insolvency alone is of itself sufficient to hold a stockholder and prevent his escaping the liability that had attached to him; in every case there has been some fact that has been construed as giving the stockholder notice of the insolvency of the bank, but although this point has not been directly passed upon, this Court has clearly stated the law; and has said that where an assignment has been made to an *insolvent person after the bank has become insolvent, the stockholder by such assignment does not escape his liability.*

This Court in **Stuart vs. Hayden,** 169 U. S., p. 9, when defining the liability under section 5151, states:

> "Whether—the bank being in fact insolvent—the transferrer is liable to be treated as a shareholder in respect of its existing contracts, debts and engagements if he believed in good faith, at the time of transfer, that the bank was solvent, is a question which, in the view we take of the present case, need not be discussed; *although he may be so treated, even*

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when acting in good faith, if the transfer is to one who is financially irresponsible."

This statement of the law clearly establishes the contention of the appellant in this case. It is argued that this ruling is a dictum; this may be true, but an examination of the authorities clearly shows that it is in accord with the decisions and with the text writers upon the subject, and was not stated by Mr. Justice Harlan without consideration.

That insolvency instantly changes the relationship between stockholders and creditors was held in **McDonald, Receiver, vs. Williams,** 174 U. S., p. 397 (1899). In this case an action was brought by the receiver of a national bank to recover back a dividend which had been paid to a stockholder out of the capital of the bank, the bank at the time being insolvent. The question then arose as to whether the solvency or insolvency of the bank affected the status of the parties.

Mr. Justice Peckham, in delivering the decision of the Court, states as follows (p. 401):

> "In *Graham vs. Railroad Company,* 102 U. S., 148, 161, it was said by Mr. Justice Bradley in the course of his opinion, that 'When a corporation becomes insolvent, it is so far civilly dead that its property may be administered as a trust fund for the benefit

of its stockholders and creditors. And a court of equity, at the instance of the proper parties, will then make those funds trust funds, which, in other circumstances, are as much the absolute property of the corporation as any man's property is his.'

"And in *Hollins vs. Brierfield Coal & Iron Company*, 150 U. S., 371, 383, 385, it was stated by Mr. Justice Brewer, in delivering the opinion of the court, and speaking of the theory of the capital of a corporation being a trust fund, as follows:

"'In other words, and that is the idea which underlies all these expressions in reference to 'trust' in connection with the property of a corporation, the corporation is an entity, distinct from its stockholders as from its creditors. Solvent, it holds its property as any individual holds his, free from the touch of a creditor who has acquired no lien: free also from the touch of a stockholder who, though equitably interested in, has no legal right to, the property. Becoming insolvent, the equitable interest of the stockholders in the property, together with their conditional liability to the creditors, places the property in a condition of trust, first, for the creditors, and then for the stockholders. Whatever of trust there is arises from the peculiar and diverse equitable rights of the stockholders as against the corporation in its property and their conditional liability to its creditors.'"

On page 404 Mr. Justice Peckham further states:

"Insolvency is a most important and material fact, not only with individuals but with corporations, and with the latter as with the former the mere fact of its existence may change radically and materially its rights and obligations. Where there is no statute providing what particular act shall be evidence of insolvency or bankruptcy, it may be and it some-

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times is quite difficult to determine the fact of its existence at any particular period of time. Although no trust exists while the corporation is solvent, the fact which creates the trust is the insolvency, and when that fact is established at that instant the trust arises. To prove the instant of creation may be almost impossible, and yet its existence at some time may very easily be proved. What the precise nature and extent of the trust is, even in such case, may be somewhat difficult to accurately define, but it may be admitted in some form and to some extent to exist in a case of insolvency.

"Hence it must be admitted that the law does create a distinction between solvency and insolvency, and that from the moment when the latter condition is established the legality of acts thereafter performed will be decided by very different principles than in a case of solvency."

Stockholders should be held as partners to the amount of their stock when insolvency is established.

This principle was strongly put in **Schalucky vs. Field** (1888), 124 Ill., 617. In this case the charter of the Illinois Bank provided that "when default shall be made in the payment of any debt or liability contracted by said corporation, the stockholders shall be held individually responsible for an amount equal to the amount of stock held by them respectively, etc."

The language used by the Court in placing a construction upon the liability is as follows:

> "The stockholders, with respect to their personal liability under such a provision as Section 9, are, in effect, partners, and are liable, as such, to the creditors of the corporation to an amount equal to the amount of stock held by them respectively. The stockholders in the German Savings Bank assumed a primary liability to the creditors to pay the indebtedness of the bank to the amount stated in Section 9. When a debt was contracted by the bank, the liability of those who were then stockholders, attached, and from that moment, they became bound in the same manner and with like effect as if they had been doing business as partners unincorporated, except that the liability of each stockholder was limited to an amount equal to the amount of stock held by him."

Morawetz on Private Corporations, aptly puts the situation of the stockholder upon insolvency. In Vol. 1, Sec. 166, he says:

> "After a corporation has become insolvent, it is the duty of the company to wind up its business, call in the outstanding capital, and satisfy creditors. The shares have ceased to be the subject matter of legitimate traffic. They are a burden to the owner, and a transfer would be merely a subterfuge to avoid liability."

In the case of the **National Bank vs. Case,** 99 U. S., p. 628 (1878), this Court quotes the case of **McClaren et. al. vs. Franciscus,** 43 Mo., 452 (1869). In this case the Court did not found its views upon any question of knowledge on the part of the defendant. Their language is as follows:

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"The law is well settled, the point is very clear, that no member can exonerate himself from liability or defeat the claims of creditors, by transferring his interest to an insolvent person or a bankrupt. The members of a corporation, therefore, who would be liable, if they continued members, to the creditors of the corporation, may still be treated as members if they have disposed of their interest to an insolvent or with the view of exonerating themselves from their personal responsibility. The authorities all concur in this. (Ang. & Ames on Corp., Sec. 623.)

"The facts in this very case furnish an illustration of the foregoing rule. Some time previous to the issuing of the execution, Franciscus had sold his stock to DeBaun, whom the evidence clearly proves to have been insolvent at the time of the sale. It is true there was no transfer made on the books; so there could be no dispute about fixing the liability of Franciscus. But had the transfer been regularly made, it would have amounted to the same thing, as DeBaun's insolvency would have still left Franciscus responsible."

In **Sawyer vs. Hoag**, 17 Wall., 610 (1873), Mr. Justice Miller clearly defines how the contract between the creditor and the stockholder should be viewed, and gives strong reasons why ignorance should never free a stockholder from his contract. He states:

"After all, this artificial body is but the representative of its stockholders, and exists mainly for their benefit, and is governed and controlled by them through the officers whom they elect. And the

interest and power of legal control of each shareholder is in exact proportion to the amount of his stock. It is, therefore, but just that when the interest of the public, or of strangers dealing with this corporation is to be affected by any transaction between the stockholders who own the corporation and the corporation itself, such transaction should be subject to a rigid scrutiny, and if found to be infected with anything unfair towards such third person, calculated to injure him, or designed intentionally and inequitably to screen the stockholder from loss at the expense of the general creditor, it should be disregarded or annulled so far as it may inequitably affect him."

All the decisions which take the view that the insolvency of the bank does not affect a stockholder so as to prevent a transfer of his stock, utterly fail to recognize that insolvency creates a trust and changes at once the rights of all parties, and that it is but equitable, that in any character of partnership, insolvency should at once prevent any member of the partnership escaping liability to the detriment of creditors. It is true it may at times be difficult to establish exactly the date of insolvency, but that is not a reason for saying that when that insolvency has been established, it is not in any way to affect the rights of a stockholder unless he has knowledge of it.

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Insolvency may interfere with the transfer of shares of stock in a corporation, but is it not just that it should limit the right of sale? As Morawetz says, "The shares have ceased to be the subject matter of legitimate traffic. They are a burden to the owner and a transfer would be merely a subterfuge to avoid liability."

The reasoning of the Court of Appeals from which this writ of error is taken presents the objections that are usually urged but does not justify its decision.

Judge McPherson in giving the opinion of the Court states "there is no restriction in the Banking Act forbidding transfer after the bank has become insolvent." . . . . "As Congress has imposed no restriction on the right to sell." . . . . "Section 5139 provides that such shares shall be transferred on the books of the bank as the by-laws may prescribe," "it is merely a question of public policy whether the right of transfer shall be restricted" (p. 66).

It is respectfully submitted that this is begging the question. It cannot be said that Congress has imposed no restriction on the sale of stock until

it has been determined, how far the right of transfer on the part of the stockholder is limited by the obligation imposed upon him by Section 5151 of the United States Statutes. Under this section he is held individually responsible for the contracts, debts and engagements of the bank to the amount of his stock; until it is decided when this obligation attaches, a stockholder cannot be said to have a free right of transfer, or that his liability is a question of public policy.

The learned Court says in its opinion that no principle of justice or fair dealing forbids a transfer of the stock if the transfer is *bona fide* and in ignorance of the bank's insolvency and the seller is therefore seeking no unfair personal advantage but is merely exercising innocently an apparent statutory right.

It is respectfully submitted that if the stockholder's liability to the creditor has attached by reason of the insolvency of the bank it is no answer for the stockholder to say that he has escaped his personal liability without any knowledge that he was doing so, and that by escaping he was not seeking in any way to be unfair to the creditor. It is immaterial what the stockholder

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intended to do or what he thought. The question is, did the stockholder transfer his stock when he was bound by his contract with the creditor not to do so? And did he thus escape a liability to the creditor which he voluntarily assumed and under which he secured the creditor's money?

The learned Court states that a transfer made by a stockholder in ignorance of the fact that the bank was insolvent is not forbidden by public policy, and gives the five following reasons to refute a contrary view:

> "*First.*—The reason being that harm to the creditors should be prevented, an irresponsible shareholder ought to be permitted to transfer to another irresponsible person; for, in that event, the creditors would suffer no harm, and no reason would exist for restricting the statutory right to sell at will" (p. 67).

Because in some instances a transfer by an insolvent stockholder to another insolvent stockholder would not injure the creditor, as he could have no hope of recovery against either, it seems hard to deduce that this should be a reason for depriving him of his right to recover when the contract of indemnity would be of some value; it is immaterial that the contract may, under certain conditions, be of little protection. If it is in force, it should be executed for the benefit of the creditor as far as the

courts have power. They cannot create assets, but they can enforce rights. The reason given by the learned Judge may be one why the creditor would not apply to the Court for protection, but it is hardly one which would affect the Court in determining whether he was entitled to assistance when he asks that a transfer of stock be set aside which has been made in violation of the contract with him.

The liability of a stockholder is by virtue of a legal contract, which either does or does not exist. Whether the contract will be of no value by reason of the insolvency of the contracting party does not seem material or relevant. It is new doctrine to say that because a man loses his right against one debtor through insolvency it is a reason why all solvent debtors should likewise escape him.

The second reason given by the learned Judge is as follows:

> "*Second.*—The reason, if sufficient, ought logically to be extended so as to strike down transfers to insolvent persons made while the bank was solvent, as well as to be applied to transfers made after it had become insolvent; for the same harm is done to creditors in the one case as in the other, and in both cases a withdrawal of the statutory security ought upon the assumption to be prevented" (pp. 67, 68).

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It is respectfully submitted that this is not the question. It is immaterial what harm has been done or will be done the creditor before his right of recovery attaches against the stockholder. His contract was made to prevent an injury to him upon the happening of a certain event, namely, the insolvency of the bank. Until that has happened no liability has attached to the stockholder. He is at liberty to transfer to whomsoever he may please, whether the transferee be solvent or insolvent. The limitation to his right of transfer only exists when the bank is unable to fulfill its contracts, and until that happens the creditor has no right to object; it is therefore illogical to extend the doctrine asked for in this case to the extent of preventing stockholders from transferring their stock when a corporation is perfectly solvent, and it is directly contrary to the decisions of this Court that hold that insolvency alone fixes the liability. It does not seem convincing to say that because the law gives no remedy when there is no likelihood of injury it intended to give none when the injury is certain.

The third, fourth and fifth reasons given by the learned Judge may be considered together.

> "*Third.*—The rule would, or at least might, involve inquiry into the solvency of three persons—the

seller, the purchaser, and the bank; and the inconvenience of such an inquiry in each of many possible suits is entitled to weight in determining the applicability of the rule" (p. 68).

"*Fourth.*—In every litigated case the question of the bank's solvency, at least, at a particular date before its doors were closed would be in issue; and as this question is one of fact for the determination of a jury, it is readily conceivable that either because the amount of evidence was not the same in every case, or because different juries were disposed to take different views of the same facts, there would be conflicting verdicts concerning the bank's solvency at substantially the same instant of time" (p. 68).

"*Fifth.*—To apply such a rule would, in the language of defendant's counsel, 'introduce into all transactions an element of uncertainty, for every transaction would be subject to review, even though made in good faith, if it subsequently proved that at the date when the transfer was made the bank, if then liquidated, would have proved insolvent, and that the transferee, if called upon to pay at that day all his debts, would have been unable to respond" (p. 68).

To hold that it is contrary to public policy that a stockholder's liability to pay his assessment upon his stock should attach as soon as a bank becomes insolvent, because of the inconvenience in establishing the insolvency of the bank prior to the closing of its doors, is inconsistent with the argument of the defendant's counsel and with the decisions of this Court. If a contracting party is to be

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relieved of his obligation because of the difficulty or inconvenience of proving insolvency, should he not *a fortiori* be relieved because of the difficulty of proving both that and the more difficult thing that he knew of it? Counsel argue that it would be perfectly proper and not contrary to public policy to hold a stockholder liable for the assessment when the bank was insolvent if the stockholder *knew* the bank was insolvent and assigned his stock. This is undoubtedly true and it would be no answer to say that it would be difficult for the receiver or the creditor to show the insolvency of the bank; and the creditor should, therefore, on grounds of public policy, be allowed to escape. If the difficulty of establishing insolvency is to exempt, the rule should be applied to the case of a stockholder with knowledge of the insolvency as well as to one without.

In **Stuart vs. Hayden,** 169 U. S., p. 1, Mr. Justice Harlan says (pages 8 and 9:

> "If the bank *be solvent* at the time of the transfer, that is, able to meet its existing contracts, debts and engagements, the motive with which the transfer is made is, of course, immaterial."

These words clearly show that in every case where an attempt is made to attack the motives of

a stockholder in assigning his stock, and the good faith of the transaction, you must invariably establish the insolvency of the bank at the time the transfer is made or the question of good faith does not arise; the right to prove such insolvency has never been questioned.

The reasoning of the Court of Appeals would effectually bar all suits where the facts admittedly warranted a recovery. In this case the trial Judge stated that the plaintiff could recover if the defendant had knowledge of any facts that put her upon notice that insolvency existed when she sold her stock, but how could he recover if a jury was not competent to determine that there was an insolvency? To recover the plaintiff would be required to show, not only that the defendant had fears of an insolvency, but that insolvency actually existed. The Court charged the jury that when the defendant sold the stock, "if his design or if his purpose is with a distinct knowledge of impending insolvency of the bank, or if he has circumstances from which he infers that this liability is about to become a positive, fixed liability, etc., . . . the sale will not avail him."

As the defendant had not had her stock trans-

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ferred upon the books of the bank, the receiver (under **Casey vs. Galli,** 94 U. S., p. 673, and numerous other decisions) must seek to recover the assessment by an action at law. If then the contention of the lower Court is sound, no recovery can be had against her, no matter what her knowledge may have been, it not being competent to show to a Court and jury that insolvency existed.

In the numerous cases which have been taken to the Supreme Court the defendants had transferred their stock, and consequently bills in equity were filed to have such transfer set aside; in each case the insolvency was either admitted or proved, and in every instance the insolvency was proved to exist before the bank closed its doors, and the happening of this latter event did not fix the time when the liability of the stockholder attached.

Insolvency of purchaser or transferee.

It is contended by counsel for defendant in error that when the decisions refer to the purchaser as being irresponsible, they mean a man who could not pay for his stock when he purchased it. Plaintiff in error does not admit that this contention is sound, but if it is, it would

be difficult to find a stronger case in this respect than the present one.

The purchaser in this case not only did not pay for the stock himself, he embezzled the purchase money from the bank for the purpose. The creditors of the Chestnut Street National Bank by this transaction as it now stands, by reason of the insolvency of the purchaser, have not only lost the power to collect the assessment upon the stock, they have in addition lost its face value in actual cash, that cash being handed to the stockholder, who is now trying to escape liability, out of the cash drawer of the bank by her own agent's fraud. Such facts show the justice of this Court's rule that the transferee of stock must be able to respond to the obligations of the transferrer, otherwise the latter does not escape his liability if the bank was insolvent when the transfer was made.

Decisions of different States.

In its opinion the Court of Appeals states:

> "The plaintiff in error has referred us to cases decided in several States under their respective constitutions and statutes that seem to support his contention concerning the nature and time of maturity of a shareholder's liability. These decisions hold that the liability is fixed, either absolutely or *sub modo*, by the fact of insolvency; but we do not dis-

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> cuss them, because the National Banking Act and the decisions of the Supreme Court of the United States have established a different rule in respect to shares in a national banking association" (p. 66).

It is respectfully submitted that neither the learned Court or counsel for the defendant in error have quoted any decisions of this Court to support the statement of the Court below, nor does an examination of the National Banking Act show that it establishes a different rule, and the learned Court subsequently state in their opinion that the answer to the question of the liability of the stockholder must come from "the principles of justice and fair dealing"; an answer so deduced would hardly be necessary if an Act of Congress settled the question. The decisions of the other States referred to by the lower Court are instructive, as they show that the liability here contended for is not a great hardship upon the stockholder nor against public policy or fair dealing.

The Ohio cases serve to illustrate the equity of the rule contended for. In that State, both the Constitution and the General Corporation Act provide for the individual liability of the stockholders of a corporation for its debts.

The constitutional provision is as follows:

"Dues from corporations shall be secured by such individual liability of the stockholders, and other means, as may be prescribed by law; but in all cases each stockholder shall be liable over and above the stock by him or her owned, any account unpaid therein, to a further sum at least equal in amount to such stock."

Article 13, Section 3:

The Corporation Act provides: "All stockholders of any railroad, turnpike, or plank road, magnetic telegraph or bridge company, or any joint stock company organized under the provisions of this Act, shall be deemed and held liable to an amount equal to their stock subscribed, in addition to said stock, for the purpose of securing the creditors of such company, and the trustees or directors of every society or association incorporated under Section 66 of this Act, shall be deemed and held individually liable, for all debts contracted by them for their respective societies or associations." S. C., 310; *4 Curwen*, 2582.

The first case in which the liability imposed by these laws came up for construction, and in which the same principles are involved as in the present case, was **Brown vs. Hitchcock** (1881), 36 Ohio St., 667: That was an action brought by a creditor of a corporation against the corporation and its stockholders to subject the stockholders to the payment of a judgment previously recovered by the plaintiff against the corporation, which was insolvent. Some of the defendants were stockholders at the time the

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debt was contracted, and some had transferred their stock prior to the suit and insolvency of the company.

There were two principal questions involved in the case:

First.—As to when the liability attached in favor of creditors.

Second.—Whether after the liability attaches a stockholder is discharged by the subsequent assignment or transfer of his stock.

With regard to the first question, the Court held that the individual liability of stockholders attaches in favor of creditors at the time the debt is contracted or the liability incurred by the corporation.

The Court, referring to the constitutional and statutory provisions, say, on page 678:

> "Under these provisions, it seems to us that the security furnished by the stockholder's liability, in addition to that of the corporation, attaches in favor of creditors at the time the debt is contracted or the liabilty incurred by the corporation.
>
> The corporation itself is a mere legal entity, existing only in legal contemplation, and is created for the convenience and benefit of the stockholders. All its dealings are for and on their account. It can contract no debts except under the authority, express or implied, of the stockholders, and through their corporate agents. Our constitution and laws, there-

> fore, make it an essential condition to persons thus availing themselves of the instrumentality of a corporation for the transaction of business that the security of their personal liability shall attach to and attend all corporate liabilities."

As to the second question, the Court were of the opinion that after the liability had once attached in favor of a creditor a stockholder could not discharge it by a subsequent transfer of his stock. The language of the Court on this point is as follows:

> "The next question is, whether, after the liability attaches to a stockholder, it is discharged by the subsequent assignment or transfer of his stock. We think it is not. The liability, it is true, attaches to him in respect to his stock, but after it has attached in favor of creditors it becomes as obligatory upon him personally as an express agreement. His successive assignees or holders, by accepting the stock and all the rights and benefits arising therefrom, impliedly undertake to indemnify or discharge him from the liability which attached to him as a stockholder while he held the stock."

The principle enunciated in the case has been repeatedly affirmed, and the case itself, as an authority, has been constantly referred to not only in Ohio but in other States.

In Ohio it has been regularly followed.

> *Wheeler vs. Faurat* (1881), 37 Ohio St., 26;
> *Mason vs. Alexander* (1886), 44 Ohio St., 318;

Harpold vs. Stobart (1889), 46 Ohio St., 397;
Boice vs. Hodge (1894), 51 Ohio St., 236;
Herrick vs. Wardwell (1898), 58 Ohio St., 294;
Wick. Nat. Bank vs. Union Nat. Bank (1900), (S. C. Ohio), 57 N. E. Rep., 320.

The language in several of the above cases shows how deeply rooted the rule has become in Ohio.

Thus, the Judge delivering the opinion of the Court in the case of **Harpold vs. Stobart** (*supra*), said,

After referring to the constitutional and statutory provision, page 403:

> "In construing these provisions, the holdings in this state are to the effect that the individual liability of stockholders attaches in favor of creditors at the time the debt is contracted, or the liability incurred by the corporation, and that such liability is not discharged by the subsequent assignment or transfer of the stock, but the successive assignees impliedly undertake to indemnify or discharge the assignor from the liability which attached to him while he held the stock. This right against the stockholders is intended for the common and equal benefit of all the creditors. As between the stockholders and the creditors, each stockholder is liable severally to all the creditors; but, as between stockholders, there is a proportional liability by all stockholders and right of contribution which grows out of the organic relation existing between them, and, as between them, each stockholder is bound to pay in proportion to his stock. The liability is not a primary fund or resource for the payment of the debts of the com-

pany, but is collateral to the principal obligation which rests on the corporation, and is to be resorted to only in case of the insolvency of the corporation, or where payment cannot be enforced by ordinary process."

In the case of **Wick. Nat. Bank vs. Union Nat. Bank** (*supra*), although the question involved was different, the Court quoted the rule with approval in the following language:

"Those who were creditors at and prior to the transfer are in law presumed to have trusted to the responsibility of the then stockholders as well as to the property of the corporation, and the obligation of the stockholder to the creditor is in the nature of a contract, and although not in form an express personal contract, yet it is of equally binding force. It springs out of, and is co-existent with, the contract between the corporation and the creditor. *Brown vs. Hitchcock, supra; Corning vs. McCullough*, 1 N. Y., 47; *Hawthorne vs. Calef*, 2 Wall, 10; 17 L. Ed., 776; *Norris vs. Wrenschall*, 34 Md. 492; *Hager vs. Cleveland*, 36 Md., 476. There arises therefore a manifest equity in favor of such creditors."

Again in **Rider vs. Fritchey** (1892), 49 Ohio St., 295, it is said:

"The plaintiff in error was the owner of stock in this insolvent corporation while the action was pending against it. Being a claim for which liability attached to the stockholders, as we have found, it rested upon him to an amount equal to his stock. Before the judgment was rendered he assigned his

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stock to one who, at the beginning of the present suit, and at the time of trial, was insolvent. He could not thus shift the responsibility."

And in the more recent case of **Peter vs. Union Mfg. Co.** (1897), 56 Ohio St., 181, the Court in affirming the rule laid down in **Brown vs. Hitchcock** (*supra*), said on page 204:

"He could not by the sale and transfer defeat the ultimate right of existing creditors to proceed against him on account of these shares, if a resort to that liability became necessary for their protection. His ultimate liability to them was fixed by the circumstance that he owned these shares at the time their claims were contracted."

In Maryland the Code (Art. 26, Sec. 52) provides:

"All the stockholders of any such corporation shall be severally and individually liable to the creditors of the corporation in which they are stockholders, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by the corporation, until the whole amount of the capital stock fixed and limited by the corporation shall be paid in, one-half thereof in one year, and the other half in two years from and after the incorporation of said company—or such corporation shall be dissolved."

The question as to the effect of a transfer by a stockholder of his stock in a corporation created under this code came up for decision in the case of **Hager vs. Basset** (1872), 36 Md., 476.

In holding that a transfer of stock in a corporation, before the whole capital stock was paid in, would not exonerate him from his personal liability under the code, the Court said, on page 491 :

> "The language of the 52nd Section, it must be admitted, is general in its terms, and does not in words declare whether the individual liability shall attach to such as are stockholders at the time the debt is contracted, or to those holding stock at the time the suit is brought. It is obvious, however, that the protection of the creditor was the paramount object the Legislature had in view, and the Section in question ought to receive such a construction as will best accomplish this object. In conferring the rights and franchises of a corporation upon companies incorporated under Article 26, the Legislature has affixed, as a condition precedent to the exercise thereof, that the stockholders shall be individually liable for the debts of the company until the whole capital stock is fully paid in. The original stockholders, by their acceptance of the charter, and subsequent purchasers in becoming members, must be considered as assenting to the terms and conditions thus imposed, and it is upon the faith of these terms and conditions that the public are invited to give credit to the company. Parties, therefore, dealing with the corporation rely upon this individual responsibility of shareholders, who are personally known to them, as well as upon the responsibility of the company itself. And at a time when these corporations are multiplied to an almost indefinite extent, embracing every department of trade and business in which the most sanguine can hope for success, parties dealing with the corporation may rely with much more

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confidence upon the personal liability of stockholders than upon the property and assets of the company. Accordingly, in *Norris vs. Wrenschall*, 34 Md., 492, this liability of the stockholder and its corresponding obligation to pay the debts of the company was held to be in the nature of a contract. The Court says: 'It is a debt under the statute due from the stockholder to the creditor, springing out of and co-existent with the contract between the corporation and the creditor.'"

The Court then go on to say:

"If so, if it be a debt due from the stockholder to the creditor, co-existent with the contract by the company, it is clear that no act by the stockholder without the consent of the creditor, can exonerate him from the liability thus incurred. The relation of stockholder creates a perfect legal obligation to pay the debts contracted by the company, until the whole capital shall have been paid and it is upon the faith of this perfect legal obligation that parties deal with the company. The liability of a stockholder, being, therefore, in the nature of a contract made between the company, the creditor and himself, we are of opinion that it continues, and is in no manner affected by the mere transfer of his stock. This construction is fully warranted by the language of the statute, and best accomplishes the purpose of the Legislature, namely, the protection and security of creditors. If the construction contended for by the appellant be correct, then the liability imposed by the section in question would necessarily be conditional; that is provided the creditor commenced his suit prior to the transfer of the stock. We find nothing in the language of the statute, nor in the purposes for which it was passed, to warrant such a

construction. Moreover, it denies to creditors the right to look for payment to such stockholders as were alone known to them at the time the debt was contracted, and compels them to seek payment of persons whom they could by no possibility know, and whom if known, they might have refused credit to the corporation.

"The construction we have adopted is also just and equitable as between stockholders themselves. If personal liability is to rest anywhere, it surely ought to be with those who were stockholders at the time the debt was contracted; who had the means of knowing the extent and magnitude of the same, and who could have exercised an influence in the management of the affairs of the company, rather than upon those who became shareholders subsequent to the creation of the debt, and who are in no manner responsible for the same."

The decisions in the State of New York show that the obligation of a stockholder attaches when the debt is contracted with the creditor, therefore the liability cannot be escaped by a subsequent transfer.

Thus in **Moss vs. Oakley** (1842), 2 Hill (N. Y.), 265, where the charter of a mining corporation declared its members jointly and severally liable for the payment of its debts, and who could be sued after execution returned unsatisfied against the company, although the question involved was whether stockholders who had become so after the debt was

contracted could be held liable, the Court said, per Bronson, J., on page 269, with reference to such as were members when the debt was contracted:

> "If the stockholders may be charged as partners, or, what is the same thing, as though there was no act of incorporation, it follows, of course, that those, and those only, are liable who were members of the company at the time the debt was contracted. The construction which charges them, is the one best calculated to render exact justice to both parties. A man who purchases stock, and comes into a corporation after it has been engaged in business, may often be deceived in relation to the number and magnitude of its debts. But while he is a stockholder, he can know something about the extent of obligation contracted by the company, and is not wholly without the means of exerting an influence over those who manage its concerns. And as to those who may deal with the corporation, they bestow their labor or part with their property on the credit of those who are known to be stockholders; and it may be ruinous to the creditor to turn him over to a remedy against persons with whom he did not deal, and who have come into the corporation at a subsequent period. It is true that a member who makes a fraudulent transfer of his shares for the purpose of avoiding his liability may still be treated as a stockholder. (*Marcy vs. Clark*, 17 Mass. R., 330.) But the burden of showing the fraud lies on the creditor; and he will find that no easy task at the present day, when all our sympathies are expended upon the debtor, and those who kindly aid him to live above the law. And besides, shares may be transferred, without fraud, to persons who are much less able to respond to creditors than were those who owned the stock at the time the debt was contracted."

To the same effect are:

Judson vs. Rossie Galena Co. (1842), 9 Paige (N. Y.), 597;

McCullough vs. Moss. (1846), 5 Denio (N. Y.), 567.

In the latter case the language of the Court is as follows:

> "The stockholders are declared to be liable for the payment of all debts. As soon, therefore, as a contract is made the liability attaches, and of necessity to the stockholders at the time, and this cannot be divested except by satisfaction of the demand. It is not strictly a case of guaranty or suretyship, where *laches* or indulgence by the creditor would operate as a discharge. It is a burden imposed on each stockholder as one of the conditions of the charter, that he shall be a principal debtor for all debts or demands contracted by the corporation while he is a member of it. The object of the Legislature was doubtless security to those dealing with the company, and the construction given by the Supreme Court is the only one which can fully and effectually carry out that intention. If their remedy were confined to those owning stock when suit was brought, or when judgment was recovered, or execution issued or returned, great facilities would be afforded for those who had derived the benefit of the labor or property for which the debt was incurred, in the increased value of the stock, or by the receipt of dividends, to avoid personal responsibility by transferring their stock in anticipation of a suit to enforce payment. A creditor would by that means be deprived of the security upon which it is reasonable

> to presume he relied when the credit was given, and be compelled to seek redress from parties who were unknown at the time and whom he might have been unwilling to trust. It is no answer to this view of the case to say that if a fraudulent transfer was made the liability would not be discharged, and that recourse might be had to the prior holder of the stock. Proof to establish such a fact is always difficult, and it is not just or reasonable to impose the necessity of furnishing it on a creditor."

In Tennessee the Legislature has provided in addition to the liability of the corporation that the stockholders of all corporations incorporated under section 21, of the Act of 1875 shall be individually liable to servants and employees of certain corporations for wages.

In **Jackson vs. Meeke** (1888), 87 Tenn., 69, 9 S. W., 225, one of the questions before the Court was whether after such a debt was incurred by the corporation a stockholder could avoid it as a personal claim by a transfer of his stock.

The Court, in holding that such a stockholder was liable notwithstanding the transfer, said:

> "But it is insisted that the defendant, Meek, having parted with his stock in November, 1885, some two years before the suit against him before the justice was commenced, his individual liability for the plaintiff's debt for wages ceased to rest on him, and passed over to his transferee, to whom the

plaintiff must now look. Is this correct? When the wage earners who were in the employ of the Chronicle Company, and contracted with it, contracted upon the faith of this individual liability clause, the offer of the shareholder contained in the clause in question being accepted by the 'servants and employees' of the company, ripens into a binding contract. This binding contract was upon these shareholders who were such at the time the service was rendered.

"This individual liability, when ripened into a binding contract, is beyond the control of the company or its officers; none but those for whose benefit the provision was made can release the contract. To hold differently would practically destroy this provision for the wage earner's benefit. When the shareholder sees the approaching insolvency of the corporation, he has only to make transfer of his stock to a straw man, fold his arms and let the crash come. We hold that the Legislature did not intend to place the life of this security in the hands of the shareholder, but designed to be a security, the burden of which cannot be shifted by the shareholder to another, to the prejudice of the wage earner, without his concurrence."

The same rule has been recognized in Michigan. In that State the statute provides: "The stockholder of every company incorporated under this Act shall be jointly and severally liable, in their individual capacity, for all labor performed for such company, and shall also be liable for the debts of such company for an amount equal to the amount

of any unpaid stock in such company held by them.

In **Voight vs. Dregge** (1893), 97 Mich., 322; 56 W. Rep., 557, an action was brought to recover for labor performed at a time when defendant was a stockholder, and the question was whether the fact that he had ceased to be a stockholder before action was brought would exonerate him from liability.

The Court held the defendant personally liable, notwithstanding he had sold his stock.

It said, after quoting the above statute:

> "By the terms of this Act every stockholder becomes a surety for the corporation upon its labor debts incurred during the period that he is such stockholder. Were he to become such surety by express agreement with the laborer, he would not cease to be so because of the sale of his stock. He might make such arrangement as he chose with the purchaser to assume the liability, but the creditor would not be affected thereby. If it were otherwise, the laborer's indemnity would be insecure. When the obligation is statutory, the stockholder becomes such surety with knowledge of this liability. The laborer contracts with reference to and in reliance upon it, and the Legislature cannot be supposed to have overlooked the danger of loss to the classes sought to be protected, if a mere transfer of stock could be said to relieve the vendor of the stock from his liability. There is some conflict in the books upon this subject, though much of it may

> arise from differences in the statutes. The weight of authority seems to sustain the proposition that the liability is not affected by the sale of the stock."

The California Courts have adopted the Ohio rule.

In approving the Ohio cases the Court, in **Cutting Packing Co. vs. Packer's Exchange** (1890), 25 Pac. Rep., 52, says:

> "This doctrine, it seems to us, is just and reasonable, because, if the transferee should be insolvent, the creditors of the corporation whose claims attached while the transferrer held the shares would not be affected by the transfer; while, on the other hand, if the transferrer, after the transfer, pays his proportion of any indebtedness of the corporation that he was liable for, such payment certainly adds that much to the value of the stock he transferred, and the transferee should reimburse him for the outlay."

In none of the cases quoted is it held that the creditor must show a knowledge on the part of the stockholder that the contingency upon which he contracted to become liable had happened, and the reason is obvious: *It is the happening of the contingency against which the stockholders contracted to protect the creditor that makes the liability, not the knowledge of it.* The decisions quoted show that the State Courts have held stockholders to a much stricter accountability than has been imposed upon national bank stockholders, or is now asked to be

imposed upon them. The State Courts hold that the stockholders contracted with the creditor to see that his debt was paid, and if that debt was left unpaid by the corporation, the stockholder was liable to the extent of his stock, and could not escape that liability, after the debt was contracted, by an assignment to another, even though the corporation during the interval between the time the debt was contracted and the time it was due was perfectly solvent. The United States Court, in *Stewart vs. Hayden, supra*, which is the doctrine which should have ruled the Court below, have been more lenient; they say a stockholder can escape his liability, even after the debt with the creditor has been contracted, if he sells his stock while the corporation is solvent.

The difference then is: The State Courts say the liability of a stockholder to a creditor attaches when the debt is contracted, and being a part of the contract, the stockholder cannot escape his obligation until it has been fulfilled. The United States Courts hold the liability of the stockholder is created when the creditor trusts the corporation, *but it does not attach to him, so as to prevent his escaping by assignment, until the corporation is insolvent.* This

would seem to be as lenient a view as any stockholder should ask.

As was said by the Court in **Billings vs. Robinson** 28 Hun. (N. Y), 140 (1882):

> "This is no more than the general principle of law applicable to the liability of contracting parties, for they are not allowed to discharge themselves merely by subjecting another person to the obligation of performing their contracts."

The plaintiff's third reason why the defendant in error should be held liable to pay the assessment is based on the information which she had and which prompted her to make the sale when the bank was insolvent.

The facts of the present case show that the Act of Congress is of little service and in many cases would practically be repealed if the liability of a stockholder in a national bank is made to turn upon the frame of mind which the stockholder is in when he assigns his stock after the bank has become insolvent.

It was admitted that the defendant sold her stock because the reserve of the Chestnut Street National Bank had fallen off. She knew this meant they were not doing a good business (p. 40).

She had also been told there was no money in small banks. With this knowledge and with a fear of the liability which existed in national bank stock, she sold the stock. (See pp. 38 to 41 of Record.) The significance of a reserve below the legal limit is shown by Section 5191, which provides that if the reserve is not restored within 30 days after notice from the Comptroller, the latter may appoint a receiver.

The learned trial Court, in passing on plaintiff's fourth point, said (pp. 49–50):

> "The law, as the Court understands it and gives it to you, is this, that the stockholder in a national bank, however he may have derived his stock, has in general a right to sell it, and if he is moved to sell it because he is unwilling to hold a stock to which such a liability may attach, that reason for selling it is not one that prevents his being relieved by such a sale from the liability. But if his design, if his purpose is, with a distinct knowledge of impending insolvency of the bank, or if he has circumstances from which he infers that this liability is about to become a positive fixed liability, and as a mere subterfuge, or not to use so strong a word, if for the purpose of escaping a fixed liability, which he perceives or has reason to suppose is about to occur, he relieves himself or seeks to relieve himself by a sale of his stock, the sale will not avail him. Now, having said this, I will re-read that point, because it seems to be quite an important one in the case. The point is: 'It is not necessary that the defendant should have a knowledge of the

fact that the bank was in difficulties when he sold his stock. He could not sell his stock so as to escape liability if he had any reason whatever to make him feel that he was not safe and had better relieve himself from liability.'

"I say I do not affirm that point, because in view of what I have said I do not understand the law to be that merely because he felt himself not safe in holding a stock of that character, would be a reason to prevent his selling it and relieving himself from future responsibility, unless his fear as to safety arose from a knowledge of facts that made him specially apprehensive with regard to the particular stock that he held" (p. 50).

The opinion of the learned Trial Judge shows how impossible it is to define when a stockholder is liable or to reach a satisfactory conclusion when the ordinary rules of construction of a contract are disregarded and an attempt is made to decide by a man's intent when he assigned his obligation, whether he is still liable.

The stockholder in the case at bar admits a general apprehension of the liability imposed upon the bank stock, but the Court below held that this was not enough—that there must be a special apprehension of the stock which the defendant held. The jury is then instructed to determine whether this refined distinction existed in the mind of the stockholder, and are then told they can only find

that the contract is binding if they believe there was some moral turpitude in the mind of the defendant when she assigned her obligation to an irresponsible party. This construction renders the security supposed to be furnished by the double liability of stockholders only available in the grossest cases of intention to defraud, for those cases only can be proved to the satisfaction of a jury.

In the cases which have been submitted to this Court an intent has always been proved, and it has never been necessary for this Court to hold that intention is immaterial if the bank and the transferee are both insolvent, but their words in *Stuart vs. Hayden* and in other cases show that they would so hold when such a case was brought before them. It is a most significant fact that in every case that has been brought to the attention of this Court, the stockholder has never been allowed to escape by reason of any failure to establish intention. If a stockholder had been allowed to escape by reason of a failure to prove intention, the defendant in error might argue that it was necessary to establish such intent, but no decision of this kind has ever been rendered by this Court.

The following cases closely resemble the case at bar in showing the difficulty in defining the evil intent that the lower Courts have thought necessary to establish in order to hold the stockholder to his contract and emphasize the necessity for the rule which has been stated by this Court, that an intent is not necessary, though when proved, it gives an additional ground for holding the stockholder to his obligation:

In **Cox vs. Montague** (1897), 78 Fed., 845, an actual transfer on the books of the bank was made, it was set aside and the vendor held liable. The reports that Montague saw were the published statements just such as defendant was advised about. In this case Sage, J., in delivering the opinion of the Circuit Court of Appeals, said:

> "The rule does not require proof that the transferrer had *actual knowledge of the insolvency of the bank*, and that the transfer was made with a purpose to avoid individual liability. It is enough that if the transferer had '*good ground to apprehend the failure of the bank, and made the transfer to an irresponsible person*, with intent to relieve himself from the individual liability."

In **Baker vs. Reeves** (1898), 85 Fed., Hanford, J., says, on page 837:

"It was a time of general financial depression and it was difficult to *keep on hand the amount of money required as a reserve fund to meet the demands of the depositors.* I am convinced that at the time of making the transfer of stock to his daughter Mr. Reeves hoped and believed that the bank would survive, and that his present would be a benefit, rather than an incumbrance, to his daughter. *But the bank was in a failing condition, and there was then ground to apprehend that it would become insolvent and be compelled to go out of business.* With knowledge of its condition he could not transfer the stock to a person financially irresponsible, and thereby escape the liability of a shareholder for assessments to meet the demands of creditors. *Bowden vs. Johnson*, 107 U. S., 251–264. The defendant Bronson, having received the stock, and being the holder of it at the time of the failure of the bank, is liable for the assessment; and, for the reasons stated, the defendant William H. Reeves is also liable."

In **Foster vs. Lincoln** (1896), 74 Fed., 382, Wheeler, J., says on page 383:

"Creditors of the bank, when becoming such, have a right to rely upon the responsibility of the shareholders as shown by the books at that time; *i. e., the defendant, Benjamin T. Lincoln, appears to have been under liability to the creditors of the bank when this transfer was made.* The statutes seem to intend that this liability should not be impaired by transfer and especially should it not be by transfer merely voluntary. As a bank man he must have known of this liability and he had warning of the straits of the bank by the telegram six days before the transfer. *In these circumstances he must have made*

the transfer in contemplation of this liability, although he did not know what it would amount to and hoped, and perhaps expected, it would not amount to anything."

Remaining Assignments of Error.

It does not seem necessary to present to this Court any argument on the additional assignments of error that were taken to the rulings of the Court below.

Many of the errors assigned have been cured by the verdict, and others are not of sufficient importance to present to this Court at this time. If the main contention which has been presented in this brief is decided in favor of the plaintiff in error, it renders the additional assignments immaterial.

It is therefore respectfully submitted that, under the assignments of error which have been argued in this brief, the judgment of the Court below should be reversed.

Respectfully submitted,

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Attorneys for Plaintiffs in Error.

Supreme Court of the United States.

October Term, 1902.

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Plaintiff in Error,

vs.

Susan Carson, Defendant in Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PAPER BOOK FOR DEFENDANT IN ERROR.

RICHARD C. DALE,
For the Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

October Term, 1902. No. 83.

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Plaintiff in Error,

vs.

Susan Carson, Defendant in Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PAPER BOOK FOR DEFENDANT IN ERROR.

COUNTER STATEMENT.

This action was brought by the plaintiff, as Receiver of the Chestnut Street National Bank, to recover an assessment of $1000, being one hundred per cent. upon ten shares of the capital stock of the bank, of which, by the stock register of the bank, the defendant was the apparent owner when the bank was closed, by order of the Comptroller of the Currency, on December 23d, 1897. Similar actions were brought against the defendant's brother, Hampton L. Carson, and her sister, Anne C. Carson. The cases were tried together, and resulted in a verdict for the defendants.

The defense was that the defendant was not the owner of

the stock at the time of the closing of the bank, but that the same had been sold at public auction in good faith on December 2d, 1897, and the proper officers of the bank had been requested to transfer the same to the purchaser. By the failure of the officers of the bank to make transfer in accordance with the request, which fact was unknown to the defendant, her name continued upon the stock register when it should have been removed.

Upon the trial the following facts appeared: Henry Carson, an uncle of the defendant, had been the holder of a considerable block of stock in the Chestnut Street National Bank prior to his death, in July, 1896. By his will he divided his estate among his nephews and nieces, of whom the defendant was one. In the distribution of that estate the defendant was allotted ten shares of this bank stock, and the same was transferred into her name by the executors of Henry Carson's estate, in September, 1897. In November, 1897, the defendant's brother, Hampton L. Carson, who had himself received ten shares of the same stock in the distribution of the estate, concluded to sell his shares, and having so determined, advised his sisters of the fact, and they concluded to do as he did. Mr. Carson's statement of the circumstances which induced him to sell the shares was as follows:—

> "I always had a feeling against holding stock in a National Bank, largely, I think, owing to the fact that I practice pretty actively at the bar and have defended people; but I think that which called my attention specifically to it was the fact that I had a conversation with Mr. Rhawn, I think the president of the Bank of the Republic, which had been going out and winding up, and he stated that there was no money for the smaller banks, and it was going out of business."

Mr. Carson further testified that the sole motive which induced the sale was to make a change of investment, and that he had no thought or suspicion that the Chestnut Street Bank was insolvent or in any trouble; that his feeling against holding bank stock was general as to all national bank stock, and not particular as to this bank.

The defendant having determined to sell her shares, placed them, in the month of November, 1897, in the hands of Townsend Whelen & Co., bankers and brokers, for sale. Townsend Whelen & Co. placed the shares for sale with M. Thomas & Son, auctioneers, who, on December 2d, 1897, sold these shares, with others, at public auction for the price of $100 per share, being the par value thereof, to a purchaser whose name was not disclosed at the time of sale, but who, in fact, the testimony in the case showed, was William M. Singerly, at that time president of the Chestnut Street National Bank. Upon the day following the sale, Maguire, the cashier of M. Thomas & Son, took the certificate of stock representing the defendant's shares to the bank, together with a duly executed bill of sale and power of attorney, and handed the documents to William Steele, cashier of the Chestnut Street National bank, at his desk in the bank building, and requested him, as cashier, to cause a transfer to be made on the books of the bank. The cashier stated he would, but failed to do so, and the shares remained apparently untransferred until the bank was closed by order of the Comptroller of the Currency on December 23d, 1897. The evidence was, that neither the defendant nor the auctioneer had any knowledge of the fact that Mr. Singerly was the purchaser. The bid on the auction book was signed in the name of William Steele, who bought these shares, as he often did other shares, for undisclosed principals. There was evidence that the due-bill given to the auctioneer in payment for the purchase price was issued by the bank to Mr. Singerly out of the moneys of the bank, and that he had never repaid the amount, and that the cashier placed the certificate of stock, with the receipted bill of the auctioneer for the price paid, in the cash drawer of the bank as a memorandum of the cash taken to pay for the stock, where they were found by the Receiver after his appointment.

The court submitted the case to the jury, substantially leaving to the jury two questions:—

1. Was the sale by the defendant of her shares made in good faith, without knowledge or suspicion of the impending insolvency of the bank?

2. Did the defendant do all which reasonably a stockholder should do to procure a transfer of the shares which were *bona fide* sold to a purchaser?

By the verdict of the jury both of these questions were resolved in favor of the defendant, and the general verdict may be treated as equivalent to an affirmative answer to both of these propositions.

The plaintiff has, *inter alia*, assigned for error the action of the court in declining to admit evidence offered in rebuttal by the plaintiff to the effect that on December 2d, 1897, when the shares were sold, the bank in fact was insolvent, and Mr. Singerly, the transferee, was insolvent. This offer was objected to by the defendant unless coupled with the further offer to prove knowledge on the part of the defendant of such insolvency, and the objection thus made was sustained.

The principal question raised is whether a stockholder, who in good faith has sold and transferred his shares, or done that which is equivalent to an actual transfer, continues liable, because the condition of the bank, which eventually resulted in the closing of its doors, did not differ at the time of such transfer from the condition as it existed when the Comptroller did close it; and also whether the vendor of bank stock warrants the solvency of his transferee, even though at the time when the transfer was made such transferee was supposed to to be a man of large wealth. This question will be discussed in the brief of argument.

BRIEF OF ARGUMENT.

The verdict of the jury established two propositions of fact in the cause:—

(*a.*) That the defendants sold their shares in the Chestnut Street National Bank on December 2d, 1897, in good faith, without knowledge or suspicion of the impending failure of the bank.

(*b.*) That the defendants did all which a reasonable person would do to procure upon the registry book of the bank the actual transfer of the shares to the purchaser.

This verdict was rendered by the jury after as favorable a charge as the plaintiff was entitled to under the law. The court stated the law of the case in this well-digested proposition:—

> "The question, therefore, in this case is, whether Mr. Carson was a stockholder at the time at which there is no question he must have been a stockholder, in order that he should have incurred this statutory liability; and, as I have understood counsel, there is no question about that date, namely, that he must have been a stockholder, in order to have incurred this responsibility, upon December 23d, 1897. * * *" (Record, page 46.)

Having stated the history of the defendants' acquisition of their shares, the court proceeded:—

> "They became stockholders and accepted the position of stockholders, subject to all the liability which resulted from the acceptance of that position. The real question, then, is as to whether they divested themselves of that ownership of the stock, and divested themselves of it so that under the evidence and circumstances of this case the liability here sought to be fixed upon them ceased to exist. (Record, page 46.)

* * * * * * *

> "I do understand that the law requires that in order to be relieved of liability as a stockholder, a stockholder who makes sale of his stock shall, and must, do all, in order to escape liability, that a reasonable man might and would do who in good faith sold his stock and wished it to be transferred on the books of the company. (Record, page 47.)

* * * * * * *

> "The law, as the court understands it and gives it to you, is this, that the stockholder in a National bank, however he may have derived his stock, has in general a right to sell it, and if he is moved to sell it because he is unwilling to hold a stock to which such a liability may attach, that reason for selling it is not one that prevents his being

relieved by such a sale from the liability. But if his design, if his purpose, is, with a distinct knowledge of impending insolvency of the bank, or if he has circumstances from which he infers that this liability is about to become a positive, fixed liability, and as a mere subterfuge, or, not to use so strong a word, if for the purpose of escaping a fixed liability, which he perceives or has reason to suppose is about to occur, he relieves himself or seeks to relieve himself by a sale of his stock, the sale will not avail him." (Record, page 49.)

These quotations show how clearly the minds of the jury were directed to a consideration of the real questions in the case, and the jury by its verdict decided the questions of fact in favor of the defendants.

The views expressed in the charge of the court below are in entire harmony with the current of Federal authority.

In Earle *vs.* Coyle, 95 Fed. Reporter, 99, and 97 Fed. Rep., 410, the Circuit Court of Appeals for the Third Circuit affirmed the decision of McPherson, J., sitting in the Circuit Court, in a case arising out of the failure of this same bank, under circumstances very similar to those of the present case. Earle *vs.* Coyle was heard upon a case stated. Its only difference as to the facts was that there was a longer lapse of time between the sale and the failure of the bank than that which existed in the present case; but the principles of law controlling the case are the same. McPherson, J., in the opinion filed in the Circuit Court, said:—

"Upon these facts I am of opinion that judgment must be entered in favor of the defendant. The decision of the Supreme Court in Whitney *vs.* Butler, 118 U. S., 655, 7 Sup. Ct., 61, seems to be controlling. In that case a stockholder sold his shares at auction, and the auctioneer delivered to the purchaser the certificate therefor, with a power of attorney to transfer, duly executed in blank. The purchaser paid the auctioneer for the shares, and the auctioneer delivered the money to the stockholder. No

formal transfer of the shares was made upon the books of the bank. The stockholder did not know who the purchaser was, or that the transfer had not been formally made, and had no reason to suppose that the duty to transfer had been neglected. Thus far the facts of the case now before us are identical with the facts thus stated. In Whitney *vs.* Butler, however, the purchaser was a broker that had been employed by the president of the bank to buy the stock for a customer. In the present case the purchaser was the cashier of the bank, and was himself one of its transfer officers. In both cases the certificate and the power of attorney were delivered to a transfer officer, in order that the proper entries might be made upon the books. In Whitney *vs.* Butler the certificate was delivered to the president, although it was known that he was not the purchaser; but the Supreme Court held that as the other requirements of the by-laws had been complied with, the seller had done all that he was required to do, and was not bound to see that the transfer was actually made upon the books. In the case before us the cashier, who was equally with the president an agent to supervise the transfer of stock, was also the purchaser. He was the person to whom the stock was sold by the auctioneer; and, although the auctioneer mistakenly supposed that the purchase was being made on behalf of the president of the bank, this gratuitous supposition is of no weight in the determination of the controversy. In reality the cashier was doing precisely what the apparent facts of the transaction indicated. He was buying the stock for himself, and was paying for it with his own money. When, therefore, the certificate was delivered to him, with a power of attorney, properly signed in blank, the seller had done everything in his power to do, except that he did not insist upon seeing the actual entries made in the transfer books of the bank."

And in the opinion of Acheson, C. J., in the Circuit Court of Appeals, the facts were said to bring the case within the

rule of Whitney *vs.* Butler, 118 U. S., 655, as distinguished from Richmond *vs.* Irons, 121 U. S., 27:—

> "As to the controlling facts, this case differs as much from Richmond *vs.* Irons, 121 U. S., 27, 7 Sup. Ct., 802, as that case differs from Whitney *vs.* Butler. The difference between these two cited cases appears in the following quotation from the opinion of the Supreme Court in Richmond *vs.* Irons, where, speaking of that case, the court said:—
>
> > "'The case is not within the rule laid down in Whitney *vs.* Butler, 118 U. S., 655, 5 Sup. Ct., 61. Here there is no proof, as there was in that case, of the delivery of the certificate to the bank, and a power of attorney authorizing its transfer, with a request to do so, made at the time of the transaction. The delivery was to Holmes, not as president, but as vendee.'
>
> "Here it is conceded that the delivery was to Steele, 'as cashier.'"

The testimony of the witness Maguire, the auctioneers' clerk, in the present case is uncontradicted, that the certificate with the power of attorney to transfer was delivered to Steele, the cashier of the bank, at the office of the bank, with an express direction to make the transfer to the purchaser. (See Record, page 42, testimony Edward L. Maguire):—

> "A. I took the certificate and powers, together with the bill, to Mr. Steele, who was cashier of the Chestnut Street Bank, and who was the purchaser of these shares, delivered the certificates and the bill, received a bank duebill in payment of the bill, and at that time I said to Mr. Steele, 'I wish you would be sure to transfer these shares at once.'
>
> "Q. Where did the conversation take place between you and Mr. Steele?
>
> "A. In Mr. Steele's office in the bank.
>
> "Q. And you then and there handed him the certificates and powers?

"A. I handed him the certificates and powers and received from him a bank duebill.

"Q. You said Mr. Steele was the buyer?

"A. Yes, sir."

The verdict of the jury under the charge of the court is a distinct finding that the facts testified to by this witness are the actual facts in the case.

Reference has just been made to the distinction between Whitney *vs.* Butler, 118 U. S., 655, and Richmond *vs.* Irons, 121 U. S., 27. It is not necessary to go into a detailed consideration of the facts of each case, because the criterion by which they are distinguished has been pointed out in the opinion of Judge Acheson in Earle *vs.* Coyle, already quoted. It is enough to say that the facts of the case now before the court place it clearly in the same class with Whitney *vs.* Butler, where the shares have been delivered to the cashier or transfer agent of the bank in his official capacity, with instructions to make the transfer, under circumstances where the transferrer had the right to assume that the instructions were followed and the transfer made, and where the failure to make the transfer was a distinct fraud on the transferrer.

This distinction is stated in the opinion of Mr. Justice Matthews, in Richmond *vs.* Irons, *supra*, where the rule in Whitney *vs.* Butler is recognized and reaffirmed.

That the distinction thus recognized in this earlier decision of the Supreme Court is still accepted as the settled law, we refer to the recent opinion of Mr. Justice White in Matteson *vs.* Dent, 176 U. S., 521, published since the trial of these cases, where, in a case where the liability of a stockholder was enforced, in stating the exceptions which have been engrafted upon the general doctrine that the registry of the shareholders is evidence of the liability of those whose names are there entered, the court said:—

"Cases enunciating certain of the exceptions referred to are cited in the following summary:—

"1. Where a transfer has been fraudulently or collusively made to avoid an obligation to pay assessments,

such transfer will be disregarded and the real owner be held liable. Germania National Bank *vs.* Case, 99 U. S., 628, 631, 632; Bowden *vs.* Johnson, 107 U. S., 251, 261.

"2. Where a transfer of stock is made and delivered to officers of a bank, and such officials fail to make entry of it, the Acts referred to will operate a transfer on the books, and extinguish the liability as stockholders of the transferrer. Whitney *vs.* Butler, 118 U. S., 655. In the case just cited, in applying the exception, the court very carefully and accurately restated the general rule.

"3. Where stock was transferred in pledge, and the pledgee, for the purpose of protecting his conduct, caused the stock to be put in his name on the books as pledgee, it has been held that such a registry did not amount to a transfer to the pledgee as owner, and that he therefore was not liable, although the pledgor might continue to be so. Pauly *vs.* State Loan & Trust Co., 165 U. S., 606."

The whole subject is elaborately reviewed in the opinion of the Circuit Court of Appeals for the Fifth Circuit in Snyder *vs.* Foster, 73 Fed. Rep., 136, where the distinction between Whitney *vs.* Butler and Richmond *vs.* Irons is very discriminatingly pointed out, and the court said :—

"Neither of the authorities which we have cited, nor any which we have examined, have favored the theory that a defendant stockholder could be subjected to an absolute liability merely because his name, with this stock untransferred, was found by the Receiver of an insolvent bank, as appears to have been, in this case, in the bank's stock list. * * * What else could or should have been done by a prudent, careful business man, under the state of facts in the pending case, to complete the honest efforts made by Snyder to cease to be in fact, as well as in law, a shareholder in the said bank? In some respects the facts in this case are stronger for Snyder than for the executors of Whitney in the

Whitney-Butler case. That decision did not turn on the form of authority to make the transfer. It seems to have been the purpose of the court in that case to ground the opinion largely, if not entirely, on the broad doctrine that a shareholder in good faith who has done all that a prudent business man should do, will not be held responsible for the neglect and carelessness of an officer of the bank. 'It is of the utmost importance that the liability of stockholders of National banks should be rigorously enforced, but, on the other hand, the court should not treat them with exceptional severity, and apply to their transfers different rules from those which obtain in other business transactions.' Hayes *vs.* Shoemaker, 39 Fed., 319; Young *vs.* McKay, 50 Fed., 394, and cases cited therein."

The same ruling was made in the Circuit Court in New York in Hayes *vs.* Shoemaker, 39 Fed. Rep., 319:—

"Where a shareholder of a National bank makes a *bona fide* sale of his stock, and goes with the purchaser to the bank, indorses the certificate, and delivers it to the cashier of the bank, with directions to make the transfer on the books, he has done all that is incumbent upon him to discharge his liability, and he is not liable, though the cashier failed to make the transfer, upon the subsequent suspension of the bank, for an assessment made by the Comptroller of the Currency, under Revised Statutes United States, section 5151, to pay the bank's debts."

So in Young *vs.* McKay, 50 Fed. Rep., 394, it was held:—

"In an action by the Receiver of a National bank to enforce an assessment under Revised Statutes, section 5151, against one credited on the transfer books as a stockholder, it appeared that nearly a year before the failure he had sold his stock to a broker for an undisclosed principal; that he indorsed the same, and requested the broker to inform the cashier of the transaction, and

to have the stock transferred; that the broker accordingly handed the stock to the cashier, gave him the necessary information, and requested him to make the transfer. This the cashier promised to do, but in fact the transfer was never made. The certificate recited that it was transferable on the books of the company 'by indorsement hereon and surrender of this certificate.' *Held*, that in requesting the cashier to make the transfer the broker acted as the seller's agent, and that the latter did all that was required of him as a prudent business man, and could not be held liable as a stockholder. Whitney *vs.* Butler, 7 Sup. Ct. Rep., 61, 118 U. S., 655, followed; Richmond *vs.* Irons, 7 Sup. Ct. Rep., 788, 121 U. S., 27, distinguished."

The charge of the learned court below upon the question of what was the nature of the apprehension of liability on the part of the transferrer which would subject the transaction to criticism as a fraud upon the law, is as favorable to the plaintiff as the plaintiff under the law could ask. It is in entire accord with the decisions of this court upon the subject. It cannot be that the general knowledge which every intelligent shareholder has that the law imposes upon the National bank stockholders a double liability, renders a sale of the shares fraudulent as to creditors when that knowledge operates upon the mind of the stockholder in good faith to sell his shares, having no knowledge or suspicion that the bank of which he is a shareholder is embarrassed or likely to become insolvent. The apprehension of impending insolvency must be that which is so clearly pointed out in the charge of the court already quoted—a particular apprehension with reference to the affairs of the bank in which the shares are held.

This is in accordance with the authorities. In National Bank *vs.* Case, 99 U. S., 628, the Receiver of a bank filed a bill against stockholders generally to call an assessment, without regard to certain pretended transfers of the stock. As to some of the defendants, the bill was dismissed; against others, a decree was entered. In that case the Germania Bank

held shares of the Crescent City Bank as collateral. The note which the collateral secured matured, and was not paid. The Germania Bank, as creditor, caused the shares to be transferred into its name, but subsequently retransferred the same to Waldo, one of its clerks. Waldo acquired by the transfer no beneficial interest in the stock. In the opinion, the court said:—

> "It is evident that Waldo held the stock as a cover for the Germania Bank; that, notwithstanding the transfer to him, it remained subject to the bank's control, and that the transfer to him was made to evade the liability of the true owners. It was not a sale. The bank continued after it was made a pledgee, with the legal title in itself or in its representative, and Phelps, McCullough & Co. (the bank's debtors) were no longer the owners."

After reviewing the law, in which it was held that the registered holder of shares, even though holding the same as collateral, is liable to assessment, Mr. Justice Strong proceeded:—

> "We have, then, only to inquire whether the bank succeeded in throwing off that liability by its transfer to its clerk, Waldo. It certainly did not thereby divest itself of its substantial ownership. It is not every transfer that releases a stockholder from his responsibility as such. While it is true that shareholders of the stock of a corporation generally have a right to transfer their shares, and thus disconnect themselves from the corporation and from any responsibility on account of it, it is equally true that there are some limits to this right. A transfer for the mere purpose of avoiding his liability to the company or its creditors is fraudulent and void, and he remains still liable. The English cases, it is admitted, give effect to such transfers if they are made (as it is called) 'out and out'; that is, completely, so as to divest the transferrer of all interest in the stock. But even in them it is held that if the transfer is merely a colorable, or, as sometimes coarsely denominated, a sham—if, in fact, the trans-

feree is a mere tool or nominee of the transferrer, so that, as between themselves, there has been no real transfer, 'but in the event of the company becoming prosperous, the transferrer would become interested in the profits, the transfer will be held for naught, and the transferrer will be put upon the list of contributories.' Williams' Case, Law Rep., 9 Eq., 225, note, where the transfer was, as in the present case, made to a clerk of the transferrer without consideration; Payne's Case, *Id.*, 223; Kintrea's Case, Law Rep., 5 Ch., 95. See, also, Lindley on Partnership (2d ed.), page 1352; Chinnock's Case, 1 Johns (Eng.) Ch., 714; Hyam's Case, 1 DeG., F. & J., 75; Budd's Case, 3 *Id.*, 296. The American doctrine is even more stringent. Mr. Thompson states it thus, and he is supported by the adjudicated cases: 'A transfer of shares in a failing corporation, made by the transferrer, with the purpose of escaping his liability as a shareholder, to a person who, from any cause, is incapable of responding in respect to such liability, is void as to the creditors of the company and as to other shareholders, although as between the transferrer and the transferee it was out and out.' Nathan *vs.* Whitlock, 9 Paige (N. Y.), 152; McClaren *vs.* Franciscus, 43 Mo., 452; Marcy *vs.* Clark, 17 Mass., 329; Johnson *vs.* Laflin, by Dillon, J., 6 Cent. Law Jour., 131.

"The case in hand does not need the application of so rigorous a doctrine. While the evidence establishes that the Crescent City was in a failing condition when the transfer to Waldo was made, and leaves no reasonable doubt that the Germania Bank knew it and made the transfer to escape responsibility, it establishes much more. The transfer was not an out-and-out transfer. The stock remained the property of the transferrer. Waldo was bound to retransfer it when requested, and all the privileges and possible benefits of ownership continued to belong to the bank."

In Bowden *vs.* Johnson, 107 U. S., 251, the rule is very clearly stated:—

"Where the holder of shares of stock in a National bank, who is possessed of information showing that there is good ground to apprehend the failure of the bank, colludes with an irresponsible person, with the design of substituting the latter in his place, and thus escaping the individual liability imposed by the provisions of section 12 of the Act of June 3d, 1864, chapter 106, and transfers his shares to such person, the transaction is a fraud on the creditors of the bank, and the liability of the transferrer to them is not thereby affected."

Mr. Justice Blatchford said :—

"The answer sets forth that Johnson became the purchaser and owner of the one hundred and thirty shares in 1869. As such holder he became subject to the individual liability prescribed by the statute. This liability attached to him until, without fraud as against the creditors of the bank, for whose protection the liability was imposed, he should relieve himself of it. He could do so by a *bona fide* transfer of the stock. But where the transferrer, possessed of information showing that there is good ground to apprehend the failure of the bank, colludes and combines, as in this case, with an irresponsible transferee, with the design of substituting the latter in his place, and of thus leaving no one with any liability to respond for the individual liability imposed by the statute in respect of the shares of stock transferred, the transaction will be decreed to be a fraud on the creditors, and he will be held to the same liability to the creditors as before the transfer. He will be still regarded as a shareholder *quoad* the creditors, although he may be able to show that there was a full or a partial consideration for the transfer, as between him and the transferee."

In Anderson *vs.* Philadelphia Warehouse Company, 111 U. S., 479, in deciding the particular point raised in that case, to wit :—

"That a pledgee of shares of stock in a National bank who, in good faith and with no fraudulent intent, takes

the security for his benefit in the name of an irresponsible trustee for the avowed purpose of avoiding individual liability as a shareholder, and who exercises none of the powers or rights of a stockholder, incurs no liability as such to creditors of the bank in case of its failure."

Mr. Chief Justice Waite also states the general rule applicable to the question now under consideration:—

"It is well settled that one who allows himself to appear on the books of a National bank as an owner of its stock is liable to creditors as a shareholder, whether he be the absolute owner or a pledgee only, and that, if a registered owner, acting in bad faith, transfers his stock in a failing bank to an irresponsible person, for the purpose of escaping liability, or if his transfer is colorable only, the transaction is void as to creditors. National Bank *vs.* Case, 99 U. S., 628; Bowden *vs.* Johnson, 107 U. S., 251. It is also undoubtedly true that the beneficial owner of stock registered in the name of an irresponsible person may, under some circumstances, be liable to creditors as the real shareholder, but it has never, to our knowledge, been held that a mere pledgee of stock is chargeable where he is not registered as owner."

The whole subject is very clearly treated in the opinion of Mr. Justice Field in Johnston *vs.* Laflin, 103 U. S., 800:—

"The transferability of shares in the National banks is not governed by different rules from those which are ordinarily applied to the transfer of shares in other corporate bodies. The power of attorney indorsed on the certificate is usually written or printed, with a space in blank for the name of the attorney to be inserted for the accommodation of the purchaser. The subsequent filling up of the blank by him with another name, instead of his own, as it may suit his convenience, does not so connect the vendor with the party named as to charge him with the latter's knowledge and thus affect the

previous transaction. A different doctrine would put a speedy end to the signing of powers of attorney in blank. And instruments of that kind are of great convenience in the sale of shares of incorporated companies, and are in constant use. The name with which the blank may be subsequently filled up by the purchaser is not, in practice, regarded as affecting the previous sale in any respect, but as a matter which concerns only the purchaser. It would be a source of disturbance in business if any other result were attached by the law to the proceeding.

* * * * * * *

"The whole transaction, on the part of Laflin, was free from any imputation of fraud. He sold his shares to a person competent to purchase and hold them, and received the stipulated price. It would be a perversion of justice and of the ordinary rules governing men in commercial transactions to hold the sale, under such circumstances, vitiated by the relations of the purchaser to others, of which the seller had no knowledge, or any grounds to entertain a suspicion. The validity of the sale of stock cannot be made to depend upon the accident of the immediate purchaser, or of the party to whom he may transfer the certificate, in filling up the blank in the power of attorney with the name of a person, to make the formal transfer, who is acquainted with the secret interests of others in the shares purchased. The validity of a sale and its completeness must be determined by the relation which the contracting parties at the time openly bear to each other.

"Of course, the whole case here would be changed if the sale by Laflin had not been made in good faith; but made merely to evade his just responsibility as a stockholder, or to work a fraud upon other stockholders or creditors of the bank."

The authorities which we have thus presented, were regarded by the Circuit Court of Appeals as conclusive of the question as it was presented to them and we respectfully refer to the

opinion of that court as found on page 65 of the record as a very clear disposition of the assignments of error and argument presented to that court on behalf of the plaintiff in error.

The industry and ingenuity, however, of the learned counsel for the plaintiff in error have presented to this court certain lines of argument which if accepted as applicable to this case would show that not only was this case tried under an erroneous view of the law, but that all the previous decisions of this court and of the various Circuit Courts rested upon a like ignorance.

The fundamental proposition upon which the argument of the plaintiff in error rests is found on page 16 of their brief in these words:—

> "The liability imposed by this act constitutes a contract between the creditors of the bank and the persons who are its stockholders when the debt is contracted."

In so far as the plaintiff in error contends that the double liability of stockholders under the National Banking Act is a contractual liability as distinguished from a penalty, we do not dispute their position, but in so far as it is claimed that the liability is a contract between the creditors of the bank and the persons who are its stockholders when the debt is contracted, we submit that the statement contains a fallacy. The true statement of the rule is that the liability arises out of a contractual obligation, but the contract is a contract between the stockholder and the corporation, made at the time when the stock is taken, and to be enforced, not by the creditors in their own right or on their own behalf, but by a Receiver, in the manner and subject to the conditions prescribed in the National Banking Act, and for the benefit of all concerned. That this is the correct view appears more clearly from the opinion of Mr. Justice Brewer in Whitman *vs.* Oxford National Bank, 176 U. S., 559, where in one of the Kansas corporation stockholder cases, this court referred to the National Banking Act as containing a contractual liability of a character similar to that arising under the Kansas statute, and referring to the National Banking Act, Mr. Justice Brewer said:—

> "Under that Act the individual liability of the stockholders is an essential element in the contract by which the stockholders become members of the corporation. It is voluntarily entered into by subscribing for and accepting shares of stock. Its obligation becomes a part of every contract, debt, and engagement of the bank itself, as much so as if they were made directly by the stockholder instead of by the corporation. There is nothing in the statute to indicate that the obligation arising under these undertakings and promises should not have the same force and effect, and be as binding in all other respects as any other contracts of the individual stockholder."

But the distinction between the Kansas stockholder's liability and the liability of stockholders under the National Banking Act is that while in both cases the liability arises out of a contract; under the Kansas statute, the liability may be enforced by individual creditors for their own benefit, while under the National Banking Act it must be enforced by the Receiver for the benefit of all creditors. The Kansas liability is like that of the New York statute, where, in Flash *vs.* Conn, 109 U. S., 371, the right of the creditors to maintain an action at law directly against the stockholder was recognized and enforced; the language of the New York statute being:—

> "All the stockholders of every company shall be severally individually liable to the creditors of the company to an amount equal to the amount of stock held by them respectively;"

while liability under the National Banking Act is akin to the liability under the Oregon statute, as in Patterson *vs.* Lynde, 106 U. S., 519. This was construed by Mr. Chief Justice Waite as a liability not to the creditors, but for the indebtedness.

The language of the National Banking Act is found in Revised Statutes 5151. It is as follows:—

> "The shareholders of every National banking association shall be held individually responsible, equally and

ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares.

Kennedy *vs.* Gibson, 8 Wallace, 498, is the leading case upon the procedure for the enforcement of this liability. In that case the principal question was, Whether the omission in the bill filed by the Receiver to aver action by the Comptroller enforcing the personal liability of the stockholders precedently to suit being brought by a Receiver was fatal to the bill.

The question having been determined upon demurrer affirmatively in affirming this ruling upon appeal, this court said:—

> "The 50th section of the Act provides that the Receiver, under the direction of the Comptroller of the Currency, shall take possession of the books and assets of every description of the association, collect all the debts and claims belonging to it, and may—proceeding in the manner prescribed—sell, or compound bad and doubtful debts, and sell all its real and personal property; 'and may, *if necessary to pay the debts* of such association, enforce the individual liability of the stockholders.'"
>
> * * * * * * * *
>
> "The Receiver is the instrument of the Comptroller. He is appointed by the Comptroller, and the power of appointment carries with it the power of removal. It is not for the Comptroller to decide when it is necessary to institute proceedings against the stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much shall be collected. These questions are referred to his judgment and discretion, and his determination is conclusive. The stockholders cannot control it. It is not to be questioned in the litigation that may ensue. He may make it at such time as he may deem proper, and upon such data as shall be satisfactory to him. This action on his part is indispensable, whenever the personal liability of the stockholders is sought to be

enforced, and must precede the institution of suit by the Receiver. The fact must be distinctly averred in all such cases, and if put in issue must be proved.

* * * * * * * *

"The claims of creditors may be proved before the Comptroller, or established by suit against the association. Creditors must seek their remedy through the Comptroller in the mode prescribed by the statute; they cannot proceed directly in their own names against the stockholders or debtors of the bank. The Receiver is the statutory assignee of the association, and is the proper party to institute all suits; they may be brought both at law and in equity, in his name, or in the name of the association for his use. He represents both the creditors and the association, and when he sues in his own name it is not necessary to make either a party to the suit."

The nature of the liability resting upon stockholders under the National Banking Act has been recently considered in McDonald *vs.* Thompson, 184 U. S., 71. In that case the specific question was, when the Statute of Limitations began to run against the claim, and it was asserted that it did not begin to run so long as there were outstanding claims against the bank, because the right was a right in the creditors. But this theory was rejected by the court and the right of action was held to be a right enforceable only by the Receiver under Revised Statute, section 5234, the court saying:—

"No debt becomes due to the Receiver as such until a deficiency has been ascertained and an assessment made, when the statute begins to run."

The contention made on behalf of the creditors was repudiated in these words:—

"This would involve a departure from the whole theory of the bill in this case, which is based upon the allegation that the Comptroller of the Currency made an assessment upon the stockholders June 10th, 1893, payable July 10th, from which latter date plaintiff claimed interest."

In the case now before the court, the Receiver has specifically declared upon the same theory that the right of action depends upon the assessment made against the stockholders who in law were such on December 23d, 1897. The plaintiff in error now seeks to avoid recovering upon the allegations in the declaration, and to show a right to recover upon the theory that the assessment is recoverable against the defendant as a stockholder on December 2d, 1897.

So in Studebaker *vs.* Perry, 184 U. S., 258, the provisions of the Revised Statutes with reference to the powers of the Comptroller of the Currency in making assessment are discussed, all the authorities reviewed, and the theory of liability which we have heretofore presented, is fully sustained.

That this is the true theory of the proceedings and was recognized as such by counsel for the plaintiff in error is shown by their averments in the court below. See statement of claim, record page 5.

> "It has become necessary, in order to pay and discharge said contracts, debts, and engagements, to enforce the liability of the shareholders of the capital stock of said Chestnut Street National Bank, as provided by sections 5151 and 5234 of the Revised Statutes of the United States, that therefore the Comptroller of the Currency, who is by law charged with that duty, after having ascertained, determined, and decided that in order to pay said contracts, debts, and engagements of said banking association, an assessment of one hundred (100) per centum upon the par value of each share of the capital stock of said Chestnut Street National Bank is necessary, made an order in writing to that effect, directed to the plaintiff herein, making said assessment payable April 1st, 1898, and pursuant to said order the plaintiff notified each and every shareholder and demanded payment thereof."

And in the same statement the averment is made that the defendant, Susan Carson, on the twenty-third day of September, and for a long time prior thereto, had been a stockholder. At

the trial, plaintiff's counsel, in order to make the necessary proof, offered in evidence a stipulation admitting (Record, page 12)—

> "That the Chestnut Street National Bank was duly incorporated and organized under the laws of the United States as a National banking association; that it transacted a banking business in the city of Philadelphia, in said Eastern District of Pennsylvania, until December 23d, 1897, when suspending payment of its obligations, it was declared insolvent by the Comptroller of the Currency, and that on January 29th, 1898, George H. Earle, Jr., was appointed by the said Comptroller under the laws of the United States, Receiver of said bank, and as such, by direction of the said Comptroller, is plaintiff in these actions in *assumpsit*; and that on or about April 1st, 1898, the said Comptroller, finding it necessary, ordered an assessment of one hundred (100) per cent. of the par value of the capital stock of said bank, and ordered the plaintiff in writing to collect the same equally and ratably from each and every stockholder of said bank, as prescribed by sections 5151 and 5234 of the revised Statutes of the United States."

And so in the notes of testimony, page 13:—

> "It is admitted that Mr. Earle has been appointed the Receiver of the Chestnut Street National Bank, and that the Comptroller of the Currency has made an assessment of one hundred (100) per cent. upon the bank stock."

And in the charge of Dallas, J., the necessity of the defendant being a stockholder at the date when the bank was closed was assumed by the court as admitted on the part of the plaintiff (Record, page 46), where, in charging the jury, the court said:—

> "The question, therefore, in this case is whether Mr. Carson was a stockholder at the time at which there is no question he must have been a stockholder in order that he

should have incurred this statutory liability, and, as I have understood counsel, there is no question about that date, namely, that he must have been a stockholder, in order to have incurred this responsibility, upon December 22d or 23d, 1897. I do not know that the particular day, the difference being only between two consecutive days, is unimportant."

Therefore, under the National Banking Act as construed by the courts, in order that an action at law may be maintained against a stockholder, it is requisite that there be the precedent action of the Comptroller in making the assessment as against the stockholders of record at the date when the bank closed, but in addition to this legal remedy it has been held that one who was a stockholder prior to the closing of the doors of the bank and who wrongfully caused a transfer of his shares after knowledge of impending insolvency may also be held responsible.

Such was the proceeding in Stuart *vs.* Hayden, 169 U. S., 1

That proceeding was in equity, brought by the Receiver against one Stuart who had been a stockholder in a bank which failed, and also against Gruetter & Joers, to whom the shares had been transferred about three weeks prior to the closing of the bank. Stuart had been a director in the bank for eight years prior to the date of the transfer, was a member of its finance committee, and it was found as a fact that on the date when he transferred the shares to Gruetter & Joers, he had knowledge of the then existing insolvency, and falsely represented to Gruetter & Joers that the bank was in a solvent and prosperous condition; that such representation was made for the purpose of inducing Gruetter & Joers to purchase the stock and to enable him, Stuart, to evade and escape his liability as a shareholder for an assessment thereon. The court below entered a decree against Stuart alone, relieving Gruetter & Joers on account of the fraudulent representation made to them by Stuart. The decree of the Circuit Court was reversed by the Court of Appeals in so far as to direct that a decree should be entered not only as against Stuart but also as against

Gruetter & Joers. In the Supreme Court of the United States this decree of the Court of Appeals was affirmed, with the modification that it should be made without prejudice to the right of Gruetter & Joers to protect themselves by proceedings against Stuart.

These decrees are in entire harmony with the principles stated in the cases already cited, and the language of Mr. Justice Harlan, if read in connection with the facts of the case, is also in entire harmony with the principles for which we contend. He says:—

> "The principal inquiry in this case is whether Stuart transferred his stock to Gruetter & Joers in order to escape the liability imposed by statute upon shareholders of National banking associations. His contention is that if the transfer was absolute and to persons who were at the time solvent and able to respond to an assessment upon the shares, the motive with which the transfer was made is of no consequence.
>
> "This construction of the statute seems to find some support in the general language used in a few cases. But it will be found, upon examination, that those cases were dealt with upon the basis that the facts therein showed not only an intent upon the part of the shareholder to escape liability by transferring his stock, but that the transfer was either colorable or to a person who was financially irresponsible at the time of such transfer. There is no case in which this court has held that the intent with which the shareholder got rid of his stock was of no consequence; certainly, no case in which the intent was held to be immaterial, when coupled with knowledge or reasonable belief upon the part of the transferrer that the bank was insolvent or in a failing condition."

This statement of the law is in absolute conformity with the rule for which we contend. It makes the intent of the party with reference to the particular transaction the criterion. Knowledge or reasonable belief upon the part of the trans-

ferrer that the bank was insolvent or in a failing condition is the determining factor.

Further on Judge Harlan says:—

> "If the bank be solvent at the time of the transfer, that is, able to meet its existing contracts, debts, and engagements, the motive with which the transfer is made is, of course, immaterial. But if the bank be insolvent, the Receiver may, at least, without suing the transferee and litigating the question of his liability, look to those stockholders who, knowing or having reason to know, at the time, that the bank was insolvent, got rid of their stock in order to escape the individual liability to which the statute subjected them. Whether—the bank being in fact insolvent—the transferrer is liable to be treated as a shareholder, in respect to its existing contracts, debts, and engagements, if he believed in good faith, at the time of transfer, that the bank was solvent, is a question which, in the view we take of the present case, need not be discussed; although he may be so treated, even when acting in good faith, if the transfer is to one who is financially irresponsible.
>
> "The intent with which an act was done may be proved by the declarations of the party concerned, or by facts and circumstances from which the existence of the intent may be reasonably inferred."

The plaintiff extracts from this quotation the words:—

> "Although he may be so treated, even when acting in good faith, if the transfer is to one who is financially irresponsible."

And seems to regard this quotation as the statement of an absolute proposition of law, whereby the transferrer of shares in a National bank warrants the financial responsibility of his transferree.

We submit that the case, the facts of which have been given, does not justify the conclusion that the court intended to enunciate any such general proposition. The question was not be-

fore the court. There is no case to be found in which any such general proposition has the support of judicial decision. Financial irresponsibility is a fact which may be taken into consideration as a basis upon which to find that particular transfer was made with intent to evade liability by placing the shares in the name of one to whom an assessment would be immaterial. To give to these words the construction which the plaintiff seeks to place upon them would be to introduce into all transactions an element of uncertainty, for every transaction would be subject to review, even though made in good faith, if it subsequently proved that at the date when the transfer was made the bank, if then liquidated, would have proved insolvent, and the transferree, if called upon to pay at that day all his debts, would have been unable to respond. That is the proposition which the plaintiff asks the court to adopt; but we suggest that before so radical a change should be made in the law, as it has heretofore been understood, it is incumbent upon the plaintiff either to show good reason in principle for the same or precedent having more weight than the tortured construction of part of a single sentence read out of connection with the facts upon which the opinion of the court was predicated.

The most natural explanation of the language of Mr. Justice Harlan is that he had in mind the English cases referred to in the opinion of Mr. Justice Strong in Bank *vs.* Case, 99 U. S., 628, in which English cases it had been held that an "out-and-out transfer" to an irresponsible person, with an intent to evade liability of an impending insolvency, would protect the transferrer from subsequent liability if the transfer was in fact made. Such a transfer would be in good faith so far as transferring to such transferree the entire ownership, and is referred to in the English cases as a transfer in good faith because it was in fact an absolute transfer, and in this respect the English cases differ from the American cases, which hold that an absolute transfer to an irresponsible person, known to be such, to evade the stockholder's liability, is ineffective to protect the transferrer. This, it seems to us, is the natural interpretation of the language of Mr. Justice Harlan.

The quotation made in plaintiff in error's brief at page 17 from Hobart *vs.* Johnson, 8 Fed. Rep., 493, might seem to sustain some of their argument, but when read in connection with the question actually before the court, its irrelevancy is perceived. The only question determined by the court in that case was whether a married woman stockholder in a National bank located in New Jersey was free from liability to assessment by reason of her coverture and the provisions of the New Jersey statute which, while enabling a married woman generally to contract as if unmarried, continued her inability as to contracts of accommodation indorser, guarantor or suretyship, and the point determined by the court was that the liabilty of the stockholder was not of that nature.

The point decided in McDonald *vs.* Williams, 174 U. S., 397, cited at page 25 of plaintiff in error's brief, was simply this, that the Receiver of a National bank cannot recover a dividend paid to a stockholder, not at all out of profits, but entirely out of capital, when the stockholder receiving such dividend acted in good faith, believing the same to be paid out of profits and when the bank, at the time such dividend was declared and paid, was not insolvent. The opinion of Mr. Justice Peckham, however, is valuable in this, that it points out the difficulties attendant upon determination of the time when insolvency in the broad sense arises. Where there may be no express decision of the question, we submit that the tenor of decisions has been that for the purpose of establishing the date of insolvency *qua* the legal liability of stockholder, the date when actual insolvency is defined by inability to meet maturing obligations and the closing of the doors supervenes, is to be taken.

The industry of the counsel of the plaintiff in error has collated in their brief authorities from several of the State courts construing State statutes. These cases are really of no aid in throwing light upon the present question. The decisions were made upon the construction of statutes not similar to the National Banking Act.

The only cases remaining which require comment are the following. All of these cases are recent decisions in Circuit

Courts enforcing the stockholders' liability under the National Banking Act, and all of them are in harmony with the principles stated to the jury as controlling in the charge of Judge Dallas in this case.

The cases cited were all in equity, but the reference which we are about to make will show their harmony with the principles for which we contend.

In Foster *vs.* Lincoln, 74 Fed., 382, the defendant, the president of a neighboring National bank, in the course of its business had received telegrams indicating financial difficulty in the Lyndon bank, of which he held twenty-five shares. He then, without consideration moving to him, caused his shares to be transferred into the names of his children, one of whom was a married woman and the other two minors. In holding that upon the evidence it should be found as a fact that this transfer was made in contemplation of the insolvency and relief from the double liability, the court said:—

> "As a bank man he must have known of this liability, and he had warning of the straits of the bank by the telegrams six days before the transfer. In these circumstances he must have made the transfer in contemplation of this liability, although he did not know what it would amount to, and hoped, and perhaps expected, it would not amount to, anything."

Cox *vs.* Montague, 78 Fed. Rep., 845, was a suit in equity to set aside the transfer by the appellee to his sister of sixty shares of National bank stock. It was shown that the transferee was irresponsible, and while it was not directly shown that the transferror had actual knowledge of insolvency at the date of the transfer, the court found as a fact that he had good ground to apprehend impending failure, and that the transfer in fact was made with intent to save the liability. Letters signed by the defense, marked confidential, were admitted, in which the defendant admitted his alarm at the condition of the particular bank.

Baker *vs.* Reeves, 85 Fed. Rep., 837. A stockholder in a bank transferred its shares to an irresponsible daughter with-

out any request from her or consideration received. Immediately thereafter the daughter indorsed the certificates and left them with her father for safe keeping. The court, the case being in equity, said :—

> " I am convinced that at the time of making the transfer of stock to his daughter, Mr. Reeves hoped and believed that the bank would survive, and that his present would be a benefit rather than an incumbrance to his daughter ; but the bank was in a failing condition, and there was then ground to apprehend that it would become insolvent and be compelled to go out of business. With this knowledge of its condition, he could not transfer the stock to a person financially irresponsible, and thereby escape the liability of a shareholder for assessments to meet the demands of creditors."

All these cases go upon the ground of the knowledge of the defendant of the impending failure and the intent to avoid the assessment which the law imposed. Such act the court construed to be a fraud on the law, for which equitable relief could be had upon appropriate proceedings in equity.

We have not discussed in detail the remaining assignments of error, although numerous. The counsel for the plaintiff in error in the closing page of the brief say :—

> " Many of the errors assigned have been cured by the verdict, and others are not of sufficient importance to present to this court at this time."

We do not think it proper to dignify with an argument assignments which the plaintiff in error does not think worth while to support.

RICHARD C. DALE,
For the Defendant in Error.

Supreme Court of the United States.

No. 83.—October Term, 1902.

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Plaintiff in Error, vs. Susan Carson. } In error to the United States Circuit Court of Appeals for the Third Circuit.

[January 19, 1903.]

When the Chestnut Street National Bank of Philadelphia suspended payment and its doors were closed there stood on the stock register ten shares in the name of the defendant in error. A call having been made by the Comptroller for the sum of the double liability, this suit was commenced to recover the amount. The defense was: First, that prior to the suspension of the bank the defendant had in good faith sold the stock standing in her name for a full market price, which had been paid her; second, that, in consummation of such sale, she had, by her agent delivered to the proper officer of the bank in its banking house, at the place where transfers were made, the stock certificate, with an adequate power of attorney to make the transfer, and requested that the stock be transferred; third, that the officer of the bank said that the transfer would be made as requested, and the defendant was ignorant of the fact that the officer had failed to discharge his duty; fourth, that as the defendant had done everything which the law required her to do to secure the transfer, she had ceased to be a stockholder, and was not responsible.

In submitting the case to the jury the court instructed, First, that the presence of the name of the defendant on the stock register created a presumption of liability. This, however, the jury was informed, was not conclusive, but might be rebutted. Such rebuttal, the court charged, would result if it was proven that the defendant had made a *bona fide* sale of her stock, and had, at the proper time and place, handed to the proper officer of the bank a power to transfer the same, although the officer of the bank had neglected to fulfill his duty in the premises. Second, after charging fully and accurately as to the proof essential to show a *bona fide* sale of stock in a national bank, the court having during the trial applied a like rule in passing on the admissibility of evidence, instructed the jury if the evidence established that a sale of such character had been made whilst the bank was a going concern, the defendant would not be liable, because, unknown to her, the bank was, at the time of the sale, in fact insolvent. And the same principle was applied to the un-

known insolvency of the person to whom the stock was sold. There was verdict and judgment for the defendant, which was affirmed by the Circuit Court of Appeals; thereupon this writ of error was prosecuted.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

In the argument at bar all but three of the grounds of error specified in the Circuit Court of Appeals and assigned on the allowance of this writ were expressly waived. In stating the case we have therefore called attention only to the facts and proceedings essential to an elucidation of the three questions now pressed, and hence, disregarding the grounds of error which are obsolete, we come to consider the real issues.

1. Treating the facts as foreclosed by the verdict, the Circuit Court of Appeals held that the trial court rightly instructed that the presumption of liability begotten by the presence of the name on the stock register would be rebutted if the jury found the fact to be that a *bona fide* sale of the stock had been made and that the defendant had performed every duty which the law imposed on her in order to secure a transfer on the registry of the bank. The correctness of this ruling is not open to controversy. (*Matteson* v. *Dent*, 176 U. S. 521; *Whitney* v. *Butler*, 118 U. S. 655.) But, it is urged, the court erroneously assumed the *bona fides* of the sale to have been concluded by the verdict, since the trial court mistakenly refused to instruct the jury that the sale of the stock, though in every other respect lawful, could not be so treated by the jury if, as a matter of fact, it was found that at the time of the sale, to the knowledge of the defendant, the reserve of the bank was below the limit fixed by law. (Rev. Stat. 5191.) To sustain this contention it is argued that by operation of law when the reserve of a national bank falls below the maximum provided in the statute, every transfer of stock made by a person having knowledge of the fact creates a legal presumption of bad faith, and therefore, in the event of the future suspension of the bank, avoids the transaction. But the statute creates no presumption of inability to continue business as a consequence of the reduction of the reserve below the legal requirement. On the contrary, the statute expressly contemplates the continuance of business by a bank, although its reserve may have fallen below the standard, since it merely forbids the making by a bank of certain enumerated transactions during the period when the reserve is impaired. Whether the provisions just referred to are mandatory or directory, we are not called upon to determine, but certainly, in either event, they clearly refute the construction of the statute which would be necessary in order to sustain the proposition. True, the law confers authority on the Comptroller in his discretion to require a bank, whose

reserve has fallen below the legal limit, to restore the reserve within thirty days, and moreover gives power to the Comptroller, with the approval of the Secretary of the Treasury, to appoint a receiver when a bank fails to comply after the thirty days with the demand made. These provisions, however, but add cogency to the view that it cannot be implied that the mere reduction of the reserve below the legal limit, as a matter of law, suspends the business of the bank, or, what would be tantamount thereto, affects, with a legal presumption of bad faith, all transactions made with or concerning the bank during the period whilst the reserve is impaired.

2. The proposition which arises under this head is, that it was erroneously ruled that the insolvency of the bank when the sale of stock was made was irrelevant unless the fact of insolvency was known to the seller and the sale was made to avoid impending liability that is in contemplation of insolvency. It is undisputed that at the date when the stock was sold the doors of the bank were open and it had not failed in business. Hence the proposition is this: Although a national bank has not suspended payment, all sales of its stock, whatever may be the good faith with which they are made, are void if it develops that at the date of the sale the assets of the bank, if they had been then realized on, would have been insufficient to pay its debts. The proposition is supported by what is assumed to be the essential nature of the double liability of a stockholder in a national bank and the time when such liability by operation of law becomes irrevocably fixed. Passing for a moment an analysis of the premises upon which the argument proceeds, let us determine the result to which it necessarily leads. Proceeding to do so, it becomes clear that the effect of maintaining the argument would be to virtually prevent the exercise of the power to transfer stock "like other personal property," which the statute gives in express terms. (Rev. Stat. 5139.) That such would be the result if the validity of every sale of stock depended, not upon the good faith of the seller, but upon the condition of the bank as subsequently developed, is, we think, obvious. Certainly it cannot in reason be said that the power would exist to sell stock like any other personal property if before the power could be exercised the seller must examine the affairs of the bank, marshal its assets and liabilities in order to form an accurate judgment as to the precise condition of the bank. But it has long since been pointed out (*Bank* v. *Lanier*, 11 Wall. 377) that—

"The power to transfer their stock is one of the most valuable franchises conferred by Congress on banking associations. Without this power, it can readily be seen the value of the stock would be greatly lessened, and, obviously, whatever contributes to make the shares of stock a safe mode of investment, and easily convertible, tends to enhance their value. It is no less the interest of the shareholder, than the public, that the certificate

representing his stock should be in a form to secure public confidence, for without this he could not negotiate it to any advantage.

"It is in obedience to this requirement, that stock certificates of all kinds have been construed in a way to invite the confidence of business men, so that they have become the basis of commercial transactions in all the large cities of the country, and are sold in open market the same as other securities. Although neither in form nor character negotiable paper, they approximate to it as nearly as practicable."

And in the same case (p. 376) attention was called to the fact that the purpose of Congress in making the certificates transferable had been clearly manifested by the repeal, in adopting the national banking act of 1864, of section 36 of the act of 1863, which subjected any transfer of stock in a national bank to debts due to the bank by the seller of the stock. To maintain the proposition, then, would compel us to give an interpretation to the statute which would destroy one of its essential features under the guise of giving effect to another provision of the same statute; in other words, to destroy the law under the pretext of enforcing it. But the controlling principle is, that, when reasonably possible, a statute should be so interpreted as to harmonize all its requirements by giving effect to the whole.

Moreover, when other parts of the statute are brought into view the *reductio ad absurdum* to which the proposition leads is additionally shown Thus, it is provided (Rev. Stat. sec. 5242) that—

"All transfers of the notes, bonds, bills of exchange, or evidence of debt owing to any national banking association, or all deposits to its credit; all assignments of mortgages, sureties on real estate, or all judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, are for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another except in payment of its circulating notes, shall be utterly null and void, . . ."

This by a negative affirmative establishes the validity of all contracts otherwise lawful made by the bank concerning its assets before its failure albeit at the time such contracts were made the bank was insolvent, unless the contracts come within the restrictions which the section imposes—that is, those entered into after the commission of an act of insolvency or in contemplation thereof or made with a view to prevent the application of the assets of the bank in the manner prescribed by law or with the purpose of giving a preference to one creditor over another. If the proposition were sustained it would thus come to pass that the power of stockholders to freely transfer their stock like any other personal property would be burdened with a restriction arising from the unknown insolvency of the bank, whilst such limitation would not apply to any other con-

tract concerning the property or affairs of the bank. This would be to hold that the statute had conferred the lesser freedom of contract where it was its avowed purpose to give the greater. It would besides require us to say that a limitation resulting from unknown insolvency was made effective upon a stockholder in transferring his stock when such restriction was not made operative on the bank and its officers when they entered into contracts. But this would cause the unknown insolvency to restrict the power of the person less likely to be aware of its existence and to cause it not to be controlling where knowledge was most apt to obtain. Taking into view the whole act, the provision conferring the power to transfer stock; the one already referred to which avoids contracts made in contemplation of insolvency; the authority conferred upon the Comptroller to constantly test the condition of a national bank; the right given him to suspend the business of such bank when the exigencies of its situation require it, and the double liability imposed on the registered stockholders, we think it results that the power to transfer stock, like other personal property, is not limited by the mere fact that at the time of the transfer the bank, which was a going concern, was insolvent in the sense that its assets, if liquidated, would not discharge its liabilities, unless it be shown that the seller was aware of the fact and had sold his stock to avoid the double liability which was impending.

Let us come, however, to consider the matter in the light of authority. It is clear that the assertion that the power to transfer the stock was limited by the unknown insolvency of the bank rests, not upon any express provision of the statute, but is deduced from mere implications which it is deemed must be drawn from the statute as a whole. But the settled rule hitherto enunciated by this court, in accord with the rule obtaining in the English courts, is, that where an express power is given to transfer stock, such power may not be rendered nugatory by implication. This general principle, however, is, by the decisions of this court, subjected to a limitation which does not prevail in England; that is, that the exercise of the power to transfer stock in a national bank is controlled by the rules of good faith applicable to other contracts. The qualification just stated gives no support to the proposition that where a sale of stock in a national bank is made in good faith, nevertheless the consequences of the sale are avoided if subsequently it developed that the bank was insolvent at the time of the transfer, in the sense that its assets were then unequal to the discharge of its liabilities, when such fact was unknown to the seller of the stock at the time of the sale. Without undertaking to refer to the numerous cases in which the subject has been variously considered since the adoption of the national-banking act in 1863, we advert to some of the leading authorities.

In *National Bank* v. *Case*, (99 U. S. 629,) the proof concerning the insolvency of the bank was thus stated in the opinion of the court:

"The Crescent City National Bank of New Orleans was organized under the national banking law in 1871. On the 13th of February, 1873, its London correspondents failed and the bank lost heavily by the failure—nearly the entire amount of its capital. This loss was almost immediately known in the community where the institution was located, and necessarily affected its credit. On the 4th of March, 1873, payment of checks drawn upon it by its depositors was suspended, and on the 17th of the same month its circulating notes went to protest."

As a result of the failure of the bank its doors were closed and suit was brought by the receiver to recover from the Germania the sum of its double liability on one hundred and three shares of stock which had previously stood in the name of the Germania on the stock register of the Crescent Bank. The stock in question had been acquired and registered in the name of the Germania on the tenth day of March, 1873, and the Germania had on the same day caused it to be transferred on the register from its own name to that of Waldo, one of its clerks. The court, in enforcing the liability, said:

"While it is true that stockholders of the stock of a corporation generally have a right to transfer their shares, and thus disconnect themselves from the corporation and from any responsibility on account of it, it is equally true that there are some limits to this right. A transfer for the mere purpose of avoiding his liability to the company or its creditors is fraudulent and void, and he remains still liable. The English cases, it is admitted, give effect to such transfers, if they are made [as it is called] 'out and out;' that is, completely, so as to divest the transferrer of all interest in the stock. But even in them, it is held that if the transfer is merely colorable, or, as sometimes coarsely denominated, a sham—if, in fact, the transferee is a mere tool or nominee of the transferrer, so that, as between themselves there has been no real transfer, 'but in the event of the company becoming prosperous the transferrer would become interested in the profits, the transfer will be held for naught, and the transferrer will be put upon the list of contributories.' *Williams' Case*, Law Rep. 9 Eq. 225, note, where the transfer was, as in the present case, made to a clerk of the transferrer without consideration; *Payne's Case*, Id. 223; *Kintrea's Case*, Law Rep. 5 Ch. 95. See also Lindley on Partnership [second dition], page 1352; *Chinnock's Case*, 1st Johns. (Eng.) chap. 714; *Hyam's Case*, 1 De G. F. & J. 75; *Budd's Case*, 3 Id. 296. The American doctrine is even more stringent. Mr. Thompson states it thus, and he is supported by the adjudicated cases: 'A transfer of shares in a failing corporation, made by the transferrer with the purpose of escaping his liability as a shareholder, to a person who from any cause, is incapable of responding in respect to such liability, is void as to the creditors of the company and to other shareholders, although as between the transferrer and the transferree it was 'out and out.'"

It was decided, however, that it was not necessary to apply the more stringent American rule, since it was found that the transfer under consideration was not real, but was fraudulent and collusive. As from the undisputed facts stated by the court in its opinion, the bank became insolvent in the sense that its assets were unequal to pay its debts in February, 1873,

nearly a month before the alleged sale was made, it follows that everything said in the opinion of the court as to the fraudulent and collusive nature of the transfer, was wholly unnecessary if mere insolvency avoided the sale and affixed the liability. But it clearly appears from the reasoning of the court that the investigation of the question of fraud and collusion was essential because it was deemed that insolvency alone did not avoid the transfer. The ruling, therefore, was directly adverse to the construction of the law now relied upon.

Bowden v. *Johnson*, (107 U. S. 251,) also involved whether a stockholder in a national bank was liable despite a transfer made by him of his stock. It was asserted that he was, first, because he had made the sale with knowledge of the approaching failure of the bank and to avoid the double liability which was impending; and, second, because the sale had been collusively made to a person who was known by the seller to be insolvent and unable to respond to the double liability. The undoubted fact was, although the bank had not suspended, that at the time of the transfer it was insolvent in the sense that its assets were not equal to the discharge of its liabilities. In considering whether the stockholder was liable, the court said:

"As such shareholder he became subject to the individual liability prescribed by the statute. This liability attached to him until, without fraud, as against the creditors of the bank, for whose protection the liability was imposed, he should relieve himself from it. He could do so by a *bona fide* transfer of the stock."

Having thus held that there could be no liability if the sale of stock had been made in good faith, and hence excluding the power to avoid the transfer merely because of the insolvency of the bank at the time when the sale was made, the court proceeded to examine the question of good faith and to re-enunciate the principle which had been previously stated in *National Bank* v. *Case*, *supra*. The court said (p. 261):

"But where the transferrer, possessed of information showing that there is good ground to apprehend the failure of the bank, colludes and combines, as in this case, with an irresponsible transferee, with the design of substituting the latter in his place, and of thus leaving no one with any ability to respond for the individual liability imposed by the statute, in respect of the shares of stock transferred, the transaction will be decreed to be a fraud on the creditors, and he will be held to the same liability to the creditors as before the transfer."

Answering the contention that even admitting the sale to have been made with knowledge of impending failure to avoid the liability to arise therefrom, it could not be avoided because the sale was intended between the parties to be real, or, to use the expression referred to in *National Bank* v. *Case*, was an out and out sale, the court, in declining to follow the English cases and in adhering to the broader doctrine adverted to in *National Bank* v. *Case*, said: "But it was held by this court in *National*

Bank v. *Case,* (99 U. S. 628,) that a transfer on the books of a bank is not in all cases enough to extinguish liability. The court in that case defined as one limit of the right to transfer that the transfer must be out and out, or one really transferring the ownership as between the parties to it. But there is nothing in the statute excluding as another limit that the transfer must not be to a person known to be irresponsible, and collusively made, with the intent of escaping liability and defeating the rights given by the statute to creditors."

In *Whitney* v. *Butler,* (118 U. S. 655,) the facts were these: A stockholder in the Pacific National Bank of Boston sold his stock on the 8th of November, 1881. Ten days thereafter, on November the 18th, the bank suspended payment and closed its doors. Beyond doubt the bank was insolvent on the 8th of November when the stock was sold, since the Comptroller certified, on the 16th of December, 1881, that the result of his investigation disclosed that "the entire capital stock," amounting to $961,300, had been lost. See statement of facts, *Delano* v. *Butler,* (118 U. S. 638,) which statement was also a part of the record in *Whitney* v. *Butler.* The defense of the stockholder, against whom the double liability was sought to be enforced, was that, having sold his stock and performed every duty required of him to secure a transfer, he was no longer liable, although his name remained upon the register. The court, after expressly stating (p. 658) the good faith of the defendant, because he had no reason whatever "to believe that the bank was insolvent, or was about to become so," and treating the sale as valid for that reason, proceeded to hold that the stockholder was not liable, because he had done everything in his power to secure the transfer, and hence his name remained on the register by the neglect of the officers of the bank. It requires no comment to demonstrate that that case was wrongly decided if the contention now made is sustainable.

In *Stuart* v. *Hayden,* (169 U.S. 2,) the facts were these: Stuart was an owner of shares in the Capital National Bank of Lincoln, Nebraska. He was a director of the bank and a member of its finance committee. On the 22d day of December, 1892, in consequence of contracts made by Stuart with Gruetter & Joers, Stuart delivered to them his certificates of stock, with the power to transfer, and a few days afterwards the stock was transferred. On the 6th of February, 1895, the bank failed. That the bank was insolvent at the date of the sale appears on the face of the opinion, for the court said:

"The bank closed its doors within less than three weeks after the stock was transferred on its books to Gruetter & Joers, its total assets being about $900,000, and total liabilities $1,463,013.17. Its bills receivable on hand were $519,600, of which $58,576.82 were good, $141,393.27 were doubtful, and $319,611.90 were worthless. Its bills receivable on hand amounted to $141,000, of which only $10,000 were worth anything."

The question presented for decision was, whether Stuart continued liable despite the transfer made to Gruetter & Joers. The court elaborately stated the facts, directed attention to the finding by the court below that at the time of the sale the bank was absolutely insolvent, and proceeded to enforce the liability against Stuart solely because, being a director of the bank and a member of its finance committee, he had knowledge of the insolvency, and therefore the sale was in bad faith. Manifestly, this case also reiterates the doctrine announced in the previous cases and excludes the conception that the mere fact of unknown insolvency avoids the transfer, since every word of the careful statement in the opinion on the facts showing knowledge would have been wholly unnecessary if the doctrine now asserted were well founded.

From what has previously been said and the cases just referred to, it is demonstrated that the contention now made is not supported by the statute, and is foreclosed by the decisions of this court. But it is suggested the rule announced in the previous cases is shown to have been a mistaken one by an observation in the opinion in *Stuart* v. *Hayden*, *supra*. The passage referred to (p. 8) is as follows:

"Whether the bank being in fact insolvent—the transferrer is liable to be treated as a shareholder, in respect of its existing contracts, debts and engagements, if he believed in good faith, at the time of transfer, that the bank was solvent, is a question which, in the view we take of the present case, need not be discussed; although he may be so treated, even when acting in good faith, if the transfer is to one who is financially irresponsible."

But this remark does not purport to pass upon the question which it suggests, but simply reserves it. The argument, however, is that the opinion would not have reserved a question which had been conclusively foreclosed. The suggestion is based on a misconception of the sentences relied on. Obviously the observations in *Stuart* v. *Hayden* cannot in reason be construed as throwing doubt upon the doctrine announced in the opinion in which the expressions relied on are contained. This would be, however, the case if the significance now attributed to the language were sound. The error of the argument arises from the fact that it affixes to the word insolvency, as found in the sentences quoted, the erroneous import hitherto pointed out; that is, an inadequacy of the assets of a bank to pay its liabilities instead of giving to it its true meaning, that of failure and consequent suspension of business.

3. The proposition under this head is that as the person to whom the stock was sold in the case before us was in fact insolvent, and hence unable to respond to the double liability, the sale was void, although the fact of such insolvency of the buyer was unknown to the seller. But this in its last analysis merely again reiterates the proposition which we have previously disposed of, since it but insists that the validity of the sale of

the stock is to be tested, not by the good faith of the seller, but upon the unknown financial condition of the buyer. The rule on this subject was clearly stated in the passage which has already been excerpted from *Bowden* v. *Johnson*, (107 U. S. 251,) where in declining to follow the English rule upholding a real or out and out sale, even if the purpose was to avoid impending liability, the court said that "the transfer must not be to a person known to be irresponsible and collusively made, with the intent of escaping liability and defeating the rights given by the statute to creditors," a principle which has been since expressly reiterated in *Matteson* v. *Dent*, (176 U. S. 521, 531.) Here again support for the proposition is sought to be derived from the concluding sentence in the passage from the opinion in *Stuart* v. *Hayden*. But in any event the observation relied upon was not essential for the decision of the case of *Stuart* v. *Hayden*, and moreover its meaning is clearly shown by the context of the opinion in which the difference between the American and English rule is pointed out. When this is borne in mind it will be seen that the expression in *Stuart* v. *Hayden* referred to but stated that difference, and, being taken in connection with other clauses of the opinion in that case, must be understood as implying that a real or out and out transfer would not be adequate to relieve the seller from his liability as a stockholder if the sale was made by him to escape his impending liability and to a person whom he knew, or had reason to know, was financially irresponsible. As the views hitherto expressed are conclusive of the meaning of the act of Congress, we deem it unnecessary to refer to the many cases from State courts of last resort construing State statutes referred to in the argument.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.